

**MEMORANDUM**

TO: FSC Members  
FROM: Bob Palmer, Chair, FSC Legislative Committee  
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SUBJ: BMAPs for Outstanding Florida Springs: Status Report and Lessons Learned  
DATE: September 28, 2017

The purposes of this memo are to provide:

- (1) A status report on the schedule for adoption of basin management actions plans (BMAPs) aimed at restoring Outstanding Florida Springs (OFSs);
- (2) Lessons learned from FSA/Sierra’s challenge of the Suwannee Springs BMAP; and
- (3) A summary of the recently adopted State rule governing verification and enforcement of agricultural best management practices.

**I. Introduction**

The Florida Springs and Aquifer Protection Act, adopted in 2016, mandated a statutory deadline of July 1, 2018 for adoption of all BMAPs which include OFSs (373.807 F.S.). There are 14 such BMAPs encompassing 24 impaired OFSs. Six OFSs are not impaired and therefore do not require a BMAP.

Adoption of a BMAP for an OFS proceeds in steps:

- FDEP convenes a public meeting(s) to discuss the draft BMAP
- FDEP releases the final draft BMAP
- Final public meeting is scheduled about 2-3 weeks after the final draft is released
- (Optional) FDEP revises the BMAP based on public comments and convenes additional public meetings
- FDEP staff finalize the BMAP
- FDEP Secretary signs off on the FDEP
- Potential legal challenges

**II. Status of BMAPs for OFSs**

<b>Name of BMAP</b>	<b>Spring(s) Affected</b>	<b>Comments</b>
Joint Chassahowitzka-Homosassa BMAP	Chassahowitzka Sprs. Homosassa Springs	Adoption targeted for Dec 2017, to follow adoption of Kings Bay BMAP.
Santa Fe Basin BMAP	Devil's Ear Spring Hornsby Spring Ichetucknee Springs	Adopted 2/26/2012 - Re-adoption targeted for June 2018
Suwannee BMAP	Falmouth Spring Fanning Spring Lafayette Blue Spring	BMAP adopted 5/24/2016 – FSC/Sierra’s right to challenge the BMAP has been preserved. One public hearing has been

	Madison Blue Spring Manatee Spring Troy Spring Peacock Spring	held; another is likely in October 2017. Significant changes have been made to the draft BMAP and re-adoption of a final draft is targeted by the end of 2017.
Jackson Blue BMAP	Jackson Blue	Adopted 5/24/2016 - Re-adoption targeted for June 2018
Kings Bay BMAP	Kings Bay Springs	Public meeting scheduled for the week of September 25. Adoption targeted by the end of 2017.
Rainbow Spring BMAP	Rainbow Spring Group	Adopted 12/1/2015 - Re-adoption targeted for June 2018. Includes septic advisory committee.
Silver Springs BMAP	Silver Springs	Adopted 10/1/2015 - Re-adoption targeted for June 2018. Includes septic advisory committee.
Volusia Blue BMAP	Volusia Springs	Last public meeting has been held; public comments are being received and processed. Adoption targeted by the end of 2017.
Wacissa Spring BMAP	Wacissa Spring	Adoption targeted for June 2018
Wakulla Spring BMAP	Wakulla Spring	Adopted 10/1/2015 - Re-adoption targeted for June 2018. Includes septic advisory committee.
Weeki Wachee BMAP	Weeki Wachee Spring	Adoption targeted for Dec 2017, to follow adoption of Kings Bay BMAP.
DeLeon Spring BMAP	DeLeon Spring	Adoption targeted for March 2018, following adoption of Volusia BMAP.
Gemini Springs BMAP	Gemini Springs	Adoption targeted for March 2018, following adoption of Volusia BMAP.
Wekiva BMAP	Wekiva Spring Rock Spring	Adopted 10/27/2015 – Re-adoption targeted for June 2018. Includes septic advisory committee.

### III. Lessons Learned from the Suwannee BMAP

As indicated in the table above, a number of BMAPs for OFSs were adopted prior to the passage of the 2016 water law. However, that law did change the requirements for what a BMAP must contain (see 373.807 F.S.), so even BMAPs adopted prior to 2016 will have to be re-proposed and re-adopted by July 1, 2018.

Groups tracking BMAP adoption might learn useful lessons from the experience of springs advocates who have been discussing and negotiating the Suwannee BMAP with FDEP for the past 15 months. Here’s a link to an FSC press release describing the agreement reached in June 2016 between FDEP, FSC, and the Sierra Club:

[http://docs.wixstatic.com/ugd/719d3f\\_d2288e365c1341a2ba916b1742c25570.pdf](http://docs.wixstatic.com/ugd/719d3f_d2288e365c1341a2ba916b1742c25570.pdf)

And here’s a link to a GAINESVILLE SUN article describing that agreement:

<http://www.gainesville.com/news/20160720/enviro-groups-state-seek-to-work-out-differences-on-suwannee-cleanup>

FDEP tried to finalize the Suwannee BMAP in June 2016 – before the requirements of the “Florida Springs and Aquifer Protection Act” went into effect on July 1, 2016. FSC’s analysis at the time clearly showed that the draft BMAP would not have met those requirements. So FSC/Sierra offered FDEP two choices: either negotiate fixes to the draft BMAP or face an administrative challenge to the draft. FDEP decided to take the former course. The BMAP did not go into effect, and FDEP agreed that FSC/Sierra would be granted a six-month extension of time to legally challenge adoption of the BMAP. Since then, those rights have been extended several times by mutual consent, and they remain in place today.

On what basis did FSC/Sierra conclude that a legal challenge might succeed and what has been the result of the negotiations over the past 15 months?

FSC/Sierra’s analysis was not based on complicated technical findings. Rather, FSC/Sierra made the simple observation (with which FDEP agreed) that the original draft Suwannee BMAP failed to include several key elements required by these sections of law:

Section of FL Law	BMAP Requirement	Comments
403.067(7)(a)(1)	The [BMAP] must establish a schedule implementing the management strategies, establish a basis for evaluating the plan’s effectiveness, and identify feasible funding strategies for implementing the plan’s management strategies.	The draft contained no schedule for: assessing or enforcing BMPs; funding necessary projects including those listed in Table 11; or getting farmers to sign up for BMPs. A feasible funding strategy was not included, with prospective planning and commitments.

373.807(1)(b)(7) and 403.067(7)(a)(2)	A BMAP must equitably allocate pollutant reductions to individual basins or to each identified point source or category of nonpoint sources. The plan must also identify mechanisms that will address potential future increases in pollutant loading.	The draft BMAP did not allocate pollutant sources by categories and did not address future increases in loading – increases which seem to be inevitable given FDACS projections of future agricultural water usage in the SRWMD.
373.807(1)(b)(1)-373.807(1)(b)(6) and 403.067(7)(a)(4)	Each new or revised BMAP shall include: a list of projects in priority ranking with cost and schedule details; sources of funding; and each project’s estimate load reduction.	The draft BMAP did not list projects and activities in priority order, and many lacked a cost estimate and a completion date. Almost none of the planned projects projected a load reduction.
373.807(1)(b)(8) and 403.067(7)(a)(6)	The BMAP must include milestones for implementation and water quality improvement, and a water quality monitoring component sufficient to evaluate whether reasonable progress in pollutant load reductions is being achieved over time.	The draft BMAP did not have specific quantitative milestones for water quality improvement.

Since June 2016, FSC/Sierra has met with FDEP at least six times to discuss bringing the Suwannee BMAP into compliance with these provisions of law. Significant progress has been made. The current draft Suwannee has addressed most of the shortcomings of the original draft, and is bracingly honest about the level of nitrogen reductions that will be required from various sources. FSC/Sierra will continue to monitor development of this BMAP before reaching a final decision about whether or not to challenge it.

As draft BMAPs for OFSs are released over the next nine months, we would recommend that springs advocates closely compare their contents with the requirements of the law. If the BMAP is clearly falling short of those required contents, local groups should consider mounting an administrative challenge to that BMAP.

#### IV. Verification and enforcement of agricultural best management practices

The 2016 water law (403.067(d)(2)(c) F.S.) included the following provision:

*c. The Department of Agriculture and Consumer Services, in consultation with the water management districts and the department, shall initiate rulemaking to adopt procedures to verify implementation of agricultural interim measures, best management practices, or other measures*

*adopted by rule pursuant to subparagraph(c)2. The rules required under this subparagraph shall include enforcement procedures applicable to the landowner, discharger, or other responsible person required to implement applicable management strategies, including best management practices or water quality monitoring as a result of noncompliance.*

This rule is obviously key to successful implementation of those springs BMAPs where agriculture is a primary source of nutrients. FDACS initiated rule-making in 2016 and earlier this month adopted Rule 5M-1.001. Here's a link to that final rule:

<https://www.flrules.org/gateway/ruleno.asp?id=5M-1.001>

The rule is toothless. Here is FDACS's own description:

*The proposed rule includes provision for producers enrolled in the BMP program to perform an annual self-verification of implementation of BMPs. The system being created for this self-verification will allow it to be completed via a web portal. The process and the form have been designed to be completed by the average producer in less than 30 minutes when done the first time; subsequent self-verifications should take less time. The self-verification is the only requirement of the proposed rule that exceeds current requirements of producers.*

In other words, producers will be able to self-certify that they're implementing appropriate BMPs. In fairness, FDACS lacks sufficient field staff to visit producers with any regularity. Field staff numbers have increased in the past year but average visit time even with increased staffing is likely to be less frequent than once a decade.

The rule is silent on what constitutes compliance. Environmental representatives suggested to FDACS that 100% compliance with required BMP elements should be required for a grade of "satisfactory" but there is no language in the rule in this regard. Therefore, FDACS personnel will have lots of flexibility in determining whether a producer is complying with BMPs.

There is also no language in the rule reinforcing the need for FDACS to collect and analyze data on fertilizer applications within a BMAP area.

5M-1.001 also authorizes FDACS to qualify individuals or entities to certify compliance – in other words, to privatize FDACS's responsibility for assuring compliance with BMPs.

In the event that a producer is found to be out of compliance, 5M-1.009 describes assistance that FDACS will provide to help producers achieve compliance. Given the language in the rule, the timetable for achieving compliance – i.e. the grace period prior to enforcement action – could be very long. No specifics are provided regarding enforcement, other than FDACS will inform FDEP of any producers who refuse to implement BMPs.

There is little at this point that springs advocates can do to change this rule. It could be worthwhile to express concerns in meetings with FDACS representatives or State legislators, or to draft op-eds.

*Status of BMAPs for OFSs*