



MEMORANDUM

TO: Sen. Charlie Dean, Sen. David Simmons, Sen. Darren Soto, Rep. Matt Caldwell,
Rep. Clovis Watson

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SUBJ: FSC's Recommended Amendments to the 2016 Water Bill (SB 552/HB 7005)

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FSC Opposes SB 552 as Reported from House and Senate Committees

Several sections of SB 552 and HB 7005 deal with springs. The Florida Springs Council does not believe that these bills will restore Florida's springs in the foreseeable future and therefore does not support the versions reported from Senate and House Committees.

Proponents will argue that the bill's accelerated deployment of Minimum Flows and Levels (MFLs) and Basin Management Action Plans (BMAPs) will accelerate springs' recovery from reduced flows and increased nitrate pollution. Experience suggests otherwise. The State's answer to reduced flows is not enhanced conservation but issuance of more water permits along with funding for a flock of costly projects to "create" additional water. And the BMAPs have been ineffective in springsheds; not one can demonstrate a path by which any degraded spring will meet nitrate target levels. The bill stipulates that plans must show how MFLs and BMAPs will achieve restoration within 20 years. This sounds good, but the bill has no sanctions (e.g. suspensions of water-use permits or reductions in fertilizer use) for failure to meet these targets.

There are a few worthwhile provisions in the bill – enhanced reporting, a requirement for local governments in sensitive springs zones to adopt urban fertilizer ordinances, a list of prohibited activities within portions of sensitive spring zones, and an acknowledgment that pollution from septic systems should be confronted in BMAPs.

However, there are also a number of harmful provisions in the bills related to Outstanding Florida Springs:

- Springs restoration plans may not depend solely on water-shortage restrictions.
- Any water-use permit denial based on an MFL triggers a water supply plan review.
- If part of a water permit allocation is not used due to conservation measures, it may not be re-claimed by a water management district.
- Regulatory constraints apply only in “priority focus areas of springsheds”, which if history is any guide will be areas far too small to protect an entire springshed.

FSC’s Recommended Amendments

FSC offers here a list of 17 amendments to the bill, each of which would improve springs protection. These amendments are not “tweaks” to existing language in the bills; they embody new ideas and new approaches to springs protection not addressed in SB 552/HB 7005. A brief rationale is provided for each amendment; detailed legislative language for each may be found in the appendix at the end of this memo.

While FSC would welcome the addition of any of these amendments to the bills, the proposed amendments are arranged in rough priority order. With adoption of the first four listed amendments, FSC would endorse passage of SB 552/HB 7005.

1. Water-metering provision should be strengthened to include all users of 100,000 gpd or more, with more frequent reporting, and with metering paid by the user.

Sen. Soto authored this provision in the 2015 session but it has been significantly weakened from his original amendment. An effective metering provision must apply to all users within 18 months. Pipe diameter is a red herring and any mention of it should be eliminated – what is relevant in metering is the size of the withdrawal, not the size of the pipe.

2. Water Management Districts (WMD) should estimate a maximum sustainable groundwater withdrawal for each district.

A simpler, cheaper, and more effective strategy for protecting springs would be to (1) calculate an overall permissible level of groundwater usage for each WMD which would protect the natural environment and (2) set permits accordingly. This approach would save considerable money since MFLs would be far less critical, and perhaps even unnecessary, if a sustainable yield were established.

3. Authorize an independent study of water fees.

An important conservation measure. Authorize a study of water-use fees (this is not water marketing) similar to studies done under Gov. Martinez in the early 1990s. An excellent rationale for a study of these fees is provided in an op-ed penned by businessman Preston Haskell:

<http://jacksonville.com/business/columnists/2015-03-17/story/guest-column-preston-haskell-calls-fees-aquifer-withdrawals>

4. Name a “Restoration Focus Spring” to be restored within 15 years.

There is no evidence that the current administration of MFLs and BMAPs will ever restore a degraded Florida spring. There would be great value in demonstrating to the public that such a restoration is in fact possible.

5. Fund an alternative North Central FL groundwater model, with appropriate peer-review.

Some groundwater models developed in the private sector seem to be more flexible and accurate than those being used by water management districts. The State should fund one or more of these outside models and utilize qualified peer reviewers to compare their usefulness with State models.

6. Insert MFL amendments specifying that: (1) a standard of “harm” rather than “significant harm” should be applied to MFLs; (2) Water reservations should be used to protect an OFS below its MFL; and (3) MFLs shall include an assessment of uncertainty levels.

(a) The 2014 springs bill (SB 1576 – Dean) provided that MFLs should meet the more protective standard of “no harm” rather than “no significant harm”. The current bill would establish a new definition of harm for water-use permits, not MFLs.

(b) Water management districts are currently authorized to reserve water from permits for certain purposes but not for protection of OFSs.

(c) Many groundwater experts have noted that district models of the impact of groundwater pumping provide a projected impact (e.g. 1” lowering of a water body) but never provide the statistical range of possibilities (e.g. 1” +/- 8”).

7. Substitute “Springs Protection and Management Zones” for “Priority Focus Areas”.

The 2014 springs bill (SB 1576 – Dean) would have designated “Springs Protection and Management Zones” (SPMZ) by rule. The current bill drops that designation in favor of “Priority Focus Areas”, which based on current State practice are likely to constitute a very limited portion of a springshed.

8. Within 2 years of BMAP adoption, all agricultural operations must adopt BMPs.

Agriculture is a major source of nitrogen pollution to degraded springs. There is no excuse for not requiring agricultural best management practices (BMP) expeditiously.

9. In BMAPs, require allocation of pollutant reductions in SPMZs.

Several current BMAPs in springsheds describe necessary pollutant reductions in general terms, but fail to assign these reductions to specific polluters.

10. Determine if fully implemented BMPs would enable the Total Maximum Daily Load (TMDL) to be met; if not, institute rule-making for advanced BMPs. Also, If karstic

conditions make certain agricultural operations inconsistent with springs protection, DEP/FDACS should partner to fund conservation easements or crop conversion.

Several BMAPs use a clean-up strategy based almost entirely on implementation of agricultural BMPs. Typically, 100% implementation of these BMPs would not lead to spring restoration. In such cases, development of advanced BMPs should be required.

Other Amendments

Increase fees on fertilizer sales.
Polluter pays.

Authorize “responsible management entities” for septic remediation.
The 2014 springs bill (SB 1576 – Dean) would have authorized local governments to establish “responsible management entities” – essentially utilities to manage clean-up of septic systems in cases where septic systems are major contributors to springs pollution.

Establish a Florida Springs Advisory Council.
The Florida Springs Initiative served as a focal point for springs education and restoration advice before it was abolished in 2011. Current funding for springs restoration is heavily weighted toward ‘cost-share’ projects aimed at slight reductions in impacts from those responsible for the degradation of springs. Greater citizen involvement could lead to a greater emphasis on conservation and reduction of pollution at the source.

Mandate peer-review procedures for all groundwater models used in regulation or planning.
Groundwater models are the key element in evaluating impacts of water withdrawals and in developing MFLs. Each district has its own models but the extent to which these models are peer-reviewed by reputable outside reviewers is spotty and inconsistent.

Authorize aggressive water conservation planning, based on 2008 planning by the SJRWMD.
SB 552 is almost entirely silent on water conservation. Each district should be tasked with undertaking a comprehensive analysis of how conservation might be enhanced in its area.

Analyses of permit applications should include assessments of uncertainty; water sales limited.

- (a) See 6(c) above.
- (b) Permittees will not be permitted to sell water for purposes outside those explicitly provided for in the permit.

Exclude CAFOs from OFSs.
Concentrated animal feeding operations should not be sited near Outstanding Florida Springs.