

BEFORE THE FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION

Silver Springs Alliance, Inc, and
Rainbow River Conservation, Inc.,
Petitioner,

v. OGC Case No. 18-1060
DEP No. 18-0211

Florida Department of
Environmental Protection,
Respondent.

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**SILVER SPRINGS ALLIANCE, INC. and
RAINBOW RIVER CONSERVATION, INC.'S
AMENDED PETITION FOR ADMINISTRATIVE HEARING**

Silver Springs Alliance, Inc. ("**SSA**") and Rainbow River Conservation, Inc. ("**RRC**") (collectively, "**Petitioners**") submit this Amended Petition regarding the June 29, 2018 Silver Springs and Upper Silver River and Rainbow Spring Group and Rainbow River Basin Management Action Plan ("**Silver-Rainbow BMAP**" or "**the BMAP**"), and state:

BACKGROUND

1. The Silver-Rainbow BMAP that is the subject of this petition was developed as part of the Florida Department of Environmental Protection ("**DEP**") Total Maximum Daily Load ("**TMDL**") Program, as authorized by the Florida Watershed Restoration Act (Section 403.067, Florida Statutes) and further specified by the Florida Springs and Aquifer Protection Act

(Sections 373.801-.813, Florida Statutes). The two springs systems were combined in this BMAP because: the two groundwater systems interact, the same policies apply to both, wastewater utilities transfer wastewater across their boundaries, and combination facilitates coordination of policies and strategies by local governments.

2. At least 30 named springs comprising Silver Springs and Silver Springs Group are the main source of water to the Upper Silver River, which along with the springs (collectively "**Silver Springs**") were identified as impaired because of a biological imbalance caused by excessive concentrations of nitrate in the water. The springs associated with Rainbow Spring Group and the next segment of the Rainbow River, called Rainbow Spring Group Run (collectively "**Rainbow Springs**"), are the primary source of water for the Rainbow River. They were also identified as impaired because of a biological imbalance caused by excessive concentrations of nitrate in the water.

3. TMDLs for nitrate were adopted as water quality restoration targets for Silver Springs and Rainbow Springs in 2013. The TMDLs establish a long-term monthly average nitrate target of 0.35 milligrams per liter (mg/L).

4. The 2016 Florida Legislature established the Florida Springs and Aquifer Protection Act (the "**Act**"), requiring DEP to

comprehensively plan, coordinate and implement actions for the protection and restoration of impaired Outstanding Florida Springs ("OFS"), which include 24 first magnitude springs, 6 additional named springs, and all associated spring runs. Ch. 2016-1, Laws of Fla. §373.802(4), Fla. Stat. Silver Springs and Rainbow Springs are first magnitude springs and therefore OFS. *Id.*

5. The Act's requirements are predicated upon Legislative findings including that:

(1) . . . springs are a unique part of this state's scenic beauty. Springs provide critical habitat for plants and animals, including many endangered or threatened species. Springs also provide immeasurable natural, recreational, economic, and inherent value. Springs are of great scientific importance in understanding the diverse functions of aquatic ecosystems. Water quality of springs is an indicator of local conditions of the Floridan Aquifer, which is a source of drinking water for many residents of this state. Water flows in springs may reflect regional aquifer conditions. In addition, springs provide recreational opportunities for swimming, canoeing, wildlife watching, fishing, cave diving, and many other activities in this state. These recreational opportunities and the accompanying tourism they provide are a benefit to local economies and the economy of the state as a whole.

. . . .

(3)(b) Springs, whether found in urban or rural settings, or on public or private lands, may be threatened by actual or potential flow reductions and declining water quality. Many of this state's springs are demonstrating signs of significant ecological imbalance, increased nutrient loading, and declining flow. Without effective remedial

action, further declines in water quality and water quantity may occur.

. . . .

(4) The Legislature recognizes that action is urgently needed and, as additional data is acquired, action must be modified.

§373.801, Fla. Stat. (underline added)

6. Among other immediate actions, Sections 373.807(1)(b) and (c), Florida Statutes, require DEP to complete OFS water quality impairment assessments and adopt new, or revise existing, BMAPs so that each impaired OFS has a new or revised BMAP complying with Section 373.807 by July 1, 2018.

7. The Silver-Rainbow BMAP is intended to establish DEP's "long-term roadmap to restoration" for water quality in Silver Springs and Rainbow Springs by reduction of the nitrate load to the Floridan Aquifer.

8. 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." §403.067(7)(a)1, Fla. Stat. The BMAP must "identify the mechanisms that will address potential future increases in pollutant loading." §403.067(7)(a)2, Fla. Stat. The BMAP "must include milestones for implementation and water quality improvement, and an

associated water quality monitoring component sufficient to evaluate whether reasonable progress in pollutant load reductions is being achieved over time." §403.067(7)(a)6, Fla. Stat. And the BMAP must "achieve the nutrient total maximum daily load no more than 20 years after the adoption of a basin management action plan." §373.807(1)(b)8, Fla. Stat.

9. Section 373.807(1)(b), Florida Statutes establishes substantive requirements for the new and revised OFS BMAPs as follows:

(b) A basin management action plan for an Outstanding Florida Spring . . . must include, at a minimum:

1. A list of all specific projects and programs identified to implement a nutrient total maximum daily load;
2. A list of all specific projects identified in any incorporated onsite sewage treatment and disposal system remediation plan, if applicable;
3. A priority rank for each listed project;
4. For each listed project, a planning level cost estimate and the estimated date of completion;
5. The source and amount of financial assistance to be made available by the department, a water management district, or other entity for each listed project;
6. An estimate of each listed project's nutrient load reduction;
7. Identification of each point source or category of nonpoint sources, including, but not limited to, urban turf fertilizer, sports turf fertilizer, agricultural fertilizer, onsite sewage treatment and disposal systems, wastewater treatment facilities, animal wastes, and

stormwater facilities. An estimated allocation of the pollutant load must be provided for each point source or category of nonpoint sources; and

8. An implementation plan designed with a target to achieve the nutrient total maximum daily load no more than 20 years after the adoption of a basin management action plan.

10. On June 29, 2018, by Secretarial Order, DEP adopted BMAPs for all impaired OFS, including the 24 first magnitude springs, 6 additional named springs, and all associated spring runs. The Silver-Rainbow BMAP was adopted at that time.

11. The Silver Springs area's existing load is 1,298,498 pounds of nitrogen per year ("**lb-N/year**"). The TMDL load is 368,363 lb-N/year. And the required reduction is 930,135 lb-N/year. The Rainbow Springs area's existing load is 2,198,348 lb-N/year. The TMDL load is 414,741 lb-N/year. And the required reduction is 1,783,607 lb-N/year.

12. The specific pollutant reduction projects and management actions required of individual entities are set forth in Chapter 2 and Appendices B, D, and F of the Silver-Rainbow BMAP. The BMAP relies heavily on Best Management Practices ("**BMPs**") to achieve necessary nitrate reductions. Unless otherwise noted in the BMAP, all requirements of the BMAP are enforceable upon the effective date of the Order adopting the BMAP.

SILVER-RAINBOW BMAP DEFICIENCIES

13. Table 8a, titled "Summary of potential credits for the Silver Springs and Upper Silver River BMAP area to meet the TMDL," indicates the "total credits from BMAP policies and submitted projects" is 487,563 to 632,159 lb-N/year, which is inadequate to meet the TMDL for Silver Springs.

14. Table 8a shows an additional "credit to load to groundwater" of 11,912 to 59,560 pounds per year for "Advanced Agricultural Practices and Procedures". These advanced practices and procedures appear to correspond to those listed in Table 14, including "precisions irrigation," "soil moisture probes," "precision fertilization," "controlled release fertilizer," "cover crops," and "rotational production."

15. Table 8b, titled "Summary of potential credits for the Rainbow Spring Group and Rainbow River BMAP area to meet the TMDLs" indicates the "total credits form BMAP policies and submitted projects" is 321,680 to 413,598 lb-N/year, which is inadequate to meet the TMDL for Rainbow Springs.

16. Table 8b shows an additional "credit to load to groundwater" of 19,009 to 95,046 pounds per year for "Advanced Agricultural Practices and Procedures." These advanced practices

and procedures appear to correspond to those listed in Table 14, including "precisions irrigation," "soil moisture probes," "precision fertilization," and "cover crops."

17. Unless adopted by rule, no agricultural operation will be required to implement these "Advanced Agricultural Practices and Procedures." §§403.067(7)(a)6 and 403.067(7)(c), Fla. Stat. The BMAP does not include any committed financing for the State to implement these practices and procedures. Therefore, in absence of any requirements that producers adopt these practices and procedures, it is inappropriate for DEP to claim these reductions to load to groundwater from them.

18. The Projects listed in Appendix B of this BMAP fail to include the information required by Section 373.807(1)(b), Florida Statutes, including: a cost estimate for 311 projects; a completion date for 159 projects; a funding source for 81 projects; a funding amount for 253 projects; a committed funding source other than the same putative \$50 million annual Legacy Florida appropriation that is identified in each BMAP adopted on June 29, 2018; and an estimated load reduction for 237 projects.

19. The BMAP provides that a "15% reduction to groundwater is estimated for owner-implemented BMPs" for Farm Fertilizer and a "10% reduction to groundwater is estimated for owner-

implemented BMPs" for Livestock Waste. But these BMPs have never been verified effective for reduction of nitrogen loading to groundwater and these presumptive values are over-estimates.

20. Section 403.031(21), Florida Statutes defines "Total maximum daily load" as:

the sum of the individual wasteload allocations for point sources and the load allocations for nonpoint sources and natural background. Prior to determining individual wasteload allocations and load allocations, the maximum amount of a pollutant that a water body or water segment can assimilate from all sources without exceeding water quality standards must first be calculated.

§403.031(21), Fla. Stat. (underline added)

21. In OFS BMAPs "An estimated allocation of the pollutant load must be provided for each point source or category of nonpoint sources" "including, but not limited to, urban turf fertilizer, sports turf fertilizer, agricultural fertilizer, onsite sewage treatment and disposal systems, wastewater treatment facilities, animal wastes, and stormwater facilities." §373.807(1)(b)(7), Fla. Stat. Similarly, Section 403.067(6)(b), Florida Statutes requires DEP to provide a "detailed allocation to specific point sources and specific categories of nonpoint sources" in the Silver-Rainbow BMAP.

22. The Silver-Rainbow BMAP assigns to point sources and categories of nonpoint sources only load reduction percentages

based on the expectation such sources will implement the unverified BMPs and other strategies specified in the BMAP. For example, the above-referenced 15% reduction is assigned for owner-implemented BMPs for Farm Fertilizer, and a 10% reduction is assigned for owner-implemented BMPs for Livestock Waste. The BMAP fails to establish allocations of an amount of the total maximum daily load to each point source and category of nonpoint source so that these allocations add up to the TMDL as required. §§403.031(21), 373.807(1)(b)(7), and 403.067(6)(b), Fla. Stat.

23. In the applicable TMDL Rules, DEP created what DEP identifies as "Load Allocations" for nonpoint sources and "Wasteload Allocations" for MS4 NPDES stormwater discharges, as follows:

a) The "Load Allocations" for nonpoint sources and "Wasteload Allocations" for MS4 NPDES stormwater discharges affecting Silver Springs, "based on the mean concentrations from the 2000-2011 period, will require a 79 percent reduction of nitrate." Fla.Admin.CodeR.62-304.500(20)(b) and (c); and

b) The "Wasteload Allocations" for MS4 NPDES stormwater discharges affecting Rainbow Springs, "based on the mean concentrations from the 2000-2010 period, will require a 82

percent reduction of nitrate; and the "Load Allocations" for nonpoint sources . . . , based on the mean concentrations from the 2000-2011 period, will require a 82 percent reduction of nitrate." 62-304.640(1)(b) and (c).

The Silver-Rainbow BMAP fails to require the foregoing Nitrate load reductions, instead establishing load reduction targets that are only 71% of the Nitrate load from these sources for Silver Springs and 81% of the Nitrate load from these sources for Rainbow Springs.

24. The BMAP provides only non-specific allusions to mechanisms to address future loading associated with population and agricultural growth, including that new agricultural operations must implement unverified BMPs and potentially other additional measures; and that "other laws such as local land development regulations, comprehensive plans, ordinances, incentives, environmental resource permit requirements, and consumptive use permit requirements, all provide additional mechanisms for protecting water resources." But agricultural BMPs are presumed, but not verified, to only reduce the additional loading by between 10 and 15%; local governments cannot regulate agricultural operations that implement verified BMPs, see §163.3162(3)(a) and (b), Fla. Stat.; most agricultural

practices are exempt from ERP and CUP regulation, see §373.406, Fla. Stat.; and those that are not exempt are entitled to a presumption of compliance if they implement verified nitrogen BMPs. §403.067(7)(c)3, Fla. Stat. Further, projected population growth in the BMAP area over the next 20 years will lead to more wastewater, more septics, and more lawn fertilizer. Therefore, the future load reduction mechanisms will not address the projected additional load associated with population growth and added agricultural acreage.

25. The BMAP does not address the future increase in nitrogen load from enhanced On-Site Treatment and Disposal Systems ("**OSTDS**") that are allowed in the Priority Focus Areas ("**PFAs**") on lots less than 1 acre. The BMAP estimates that conventional septic tanks in the basin reduce nitrogen by about 50%. The BMAP also appears to assume that the enhanced OSTDS will reduce nitrogen by 65% more than conventional septic tanks (which would result in a total reduction of 82%). But according to the Florida Department of Health, the enhanced OSTDS are expected to reduce nitrogen by a total of only 65%. Therefore, the BMAP significantly underestimates the nitrogen load from new enhanced OSTDS.

26. The BMAP does not address the future increase in nitrogen load from the additional conventional septic tanks that are allowed for the next 5 years, which are not required to connect to sewers, but which must only demonstrate that sewers will be available within 5 years.

27. The BMAP contains no restrictions on new conventional septic tanks on lots over one acre anywhere inside the BMAP area, including inside the PFAs, nor does it include any restrictions on new septic tanks on lots smaller than one acre outside the PFAs but inside the overall BMAP area.

28. The BMAP provides no specific requirements for reducing Urban Turfgrass Fertilizer except that the stakeholders should provide public education programs; adopt DEP's model fertilizer ordinance and follow Florida Yards & Neighborhoods guidelines; yet the BMAP assumes these measures will reduce the nitrogen load by 6% without any substantiation for this estimate. This is identified as a "credit," which is not statutorily authorized.

29. The BMAP provides no specific requirements for reducing Sports Turf Fertilizer ("**STF**"), yet the BMAP assumes 100% of owners will implement STF BMPs and assumes a reduction of nitrogen loading to groundwater from STF by 6% without any

substantiation for this estimate. This is identified as a "credit," which is not statutorily authorized.

30. The BMAP assumes the Farm Fertilizer, Nursery Fertilizer and Livestock Wastes' load to groundwater will be reduced by 10 - 15% when 100% of owners will implement BMPs, without any substantiation for these unverified BMP estimates.

31. The BMAP does not plan for State acquisition of fee simple title or conservation easements to reduce the acreage currently dedicated to high nitrogen generating agricultural activity, nor to limit the acreage committed to such activity in the future. See, §403.067(7)(b)(1)f, Fla. Stat.

32. The BMAP fails to include monitoring for fertilizer usage or the results of implementing the education programs, the FDEP model fertilizer ordinance, Florida Yards & Neighborhoods, or the BMPs.

33. The BMAP's proposed water quality monitoring program is focused on monitoring surface water quality, not groundwater quality. The proposed water quality monitoring program will not be sufficient to determine whether the proposed nitrogen reduction strategies will reduce the nitrate concentrations in the Floridan Aquifer.

RULE 28-106.201(2) PETITION CRITERIA

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

34. The affected agency is the Department of Environmental Protection, 2600 Blair Stone Rd., Tallahassee, FL 32399. DEP's matter number is No. 18-0211, and the final order number is OGC Case No. 18-1060 and no other reference number is known by Petitioner.

(b) The name, address, and telephone number of the petitioner; 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

35. Petitioners are: Silver Springs Alliance, Inc.,; P.O.Box 153, Silver Springs, FL 34489; phone 352-694-5986; and Rainbow River Conservation, Inc., P.O. Box 729, Dunnellon, FL 34430; (352) 465-2828; and Silver Springs Alliance, Inc., 550 Midway Drive, Ocala, FL 34472; phone (352) 465-2828. Petitioners' counsel's name and address are John R. Thomas, Law Office of John R. Thomas, P.A., 8770 Dr. Martin Luther King, Jr. Street N., St. Petersburg, Fl 33702; and phone number (727) 692-4384; Pleadings may be served on Petitioner electronically to jrthomasesq@gmail.com.

(b) ...and an explanation of how the petitioner's substantial interests will be affected by the agency determination

36. Section 403.067(1), Florida Statutes establishes that DEP must "coordinate with local governments, water management districts, the Department of Agriculture and Consumer Services, local soil and water conservation districts, environmental groups, regulated interests, other appropriate state agencies, and affected pollution sources in developing and executing the total maximum daily load program".(underline added)

37. The BMAP explains "Stakeholder involvement is critical to develop, gain support for, and secure commitments in a BMAP. The BMAP process engages stakeholders and promotes coordination and collaboration to address the pollutant load reductions necessary to achieve the TMDL. DEP invites stakeholders to participate in the BMAP development process and encourages public participation and consensus to the greatest practicable extent." Though SSA and RRC both participated in the public meetings and submitted substantive comments and criticisms regarding this BMAP, the BMAP only acknowledges RRC as an interested stakeholder.

38. The SSA is a 501(c)(3) not-for-profit organization incorporated in Florida , formed in 2011 to help stop the deteriorating condition of Silver Springs. The Silver Springs

Alliance, Inc. is an advocacy group with the purpose of protection and restoration of the health of Silver Springs and its river system. Silver Springs is one of great natural wonders of the earth, and is world renown, and many of the Alliance members who have lived here since its glory days have witnessed the negative impacts that nitrate pollution and groundwater over-pumping have done to the Springs. The Alliance was instrumental in generating public opinion to coax the State into taking over the springs park from a private company that had let the park deteriorate. The Alliance was also partially successful in getting a proposed high density cattle ranch to reduce their CUP application for withdrawal of massive amounts of water from the Silver Springs springshed that would have further stressed the Springs.

39. The RRC is a 501(c)(3) not-for-profit organization incorporated in Florida. RRC was first formed in 1962 to protect and preserve the Rainbow River. In 1995 RRC achieved a 501(c)(3) non-profit status. RRC's established mission is to protect the Rainbow River through Education, Conservation, Stewardship and Advocacy. RRC has assisted in having the Rainbow River designated as a National Natural Landmark in 1972, an Outstanding Florida Water, an Aquatic Preserve in 1986, a

Surface Water Improvement and Management (SWIM) priority water body, and a Great Florida Birding Trail in 2008

40. The coordinated effort to restore water quality in Silver Springs and Rainbow Springs is within the general scope of interest and activity of SSA and RRC, respectively. Members of these organizations have devoted thousands of hours to protecting and restoring Silver Springs and Rainbow Springs.

41. An association pleads standing on behalf of its membership by demonstrating that "a substantial number of its members, although not necessarily a majority, are substantially affected" by the challenged agency action; the subject matter of the challenged agency action is "within the association's general scope of interest and activity"; and "the relief requested is of a type appropriate" for an association to receive on behalf of its members". *Farmworker Rights Organization, Inc. v. Department of Health and Rehabilitative Services*, 417 So.2d 753, 754 (Fla. 1st DCA 1982); *Caloosa Property Owners Ass'n, Inc. v. Palm Beach County Bd. of County Com'rs*, 429 So.2d 1260 (Fla. 1st DCA 1983) (*Florida Home Builders* test for standing in section 120.56(1) rule challenge proceeding was extended in *Farmworkers Rights Organization* to

section 120.57(1) proceedings); *Fla. Home Builders Ass'n v. Depot of Labor & Emp. Sec.*, 412 So.2d 351, 352-54 (Fla. 1982).

42. Petitioners' members' substantial interests are adversely affected by the 2018 Silver-Rainbow BMAP because the BMAP would undermine the Petitioners' efforts by proposing nitrogen reduction projects and strategies that are not sufficient to meet the TMDL criteria established by DEP to protect the aquatic ecosystem. By proposing inadequate nitrogen reduction goals, the BMAP will give regulators, elected officials and the public a false impression that the springs will be cleaned up by the minimal efforts proposed in the BMAP. This will negate Petitioners' efforts to work with regulators, elected officials and the general public to implement more comprehensive and thorough nitrogen control efforts needed to meet the TMDL. The BMAP conclusions will delay by 20 years Petitioners' efforts to protect the integrity of Silver Springs and Rainbow Springs, and to work toward restoration of the these aquatic systems.

43. In consideration of the following, a substantial number of the SSA's and RRC's members' substantial interests are substantially affected:

a. Silver Springs and Rainbow River must be protected as "Special Waters", which means the Environmental Regulatory Commission found them to be of "exceptional recreational" and "ecological significance" and that "the environmental, social, and economic benefits of the designation outweigh the environmental, social, and economic costs". See Fla. Admin. Code R. 62-302.700(5), 62-302.700(9)(i)(32) and (27).

b. The ecological, recreational, and economic values of Silver Springs and Rainbow Springs are widely recognized. The Silver River flows through lands preserved for public use as part of the State Park System. Fla. Admin. Code R. 62-302.700(c)(70).

c. Rainbow River and its associated springs are significant natural resources of importance for their ecosystem services and maintenance of habitat for fish and wildlife.

d. Petitioners are membership organizations formed by persons who use and enjoy the waters and environs of Silver Springs and Rainbow Springs in many ways, including, but not limited to, wading, boating, swimming, snorkeling, diving, tubing, canoeing, wildlife observation,

photography, fishing, and enjoying the aesthetic beauty of the natural aquatic habitat.

e. Petitioners' efforts and activities are in pursuit of the restoration, preservation, and protection of the aquatic ecosystems along Silver Springs and Rainbow Springs for the use and enjoyment of current and future members and others.

f. Petitioners are parties in the Silver-Rainbow BMAP proceedings, having timely submitted comments and analysis explaining the deficiencies of the BMAP. See §120.52(13)(b), Fla. Stat.

g. Petitioners were granted an extension of time to file a petition for administrative hearing regarding the BMAP.

44. The substantial interests of a substantial number of the Petitioners' members, although not necessarily a majority, are adversely affected by the BMAP because their use and enjoyment of these water resources has been diminished by diminished water quality and imbalance of native flora; and contrary to law, the Silver-Rainbow BMAP will not ever achieve the TMDL, and will not restore water quality in time to allow Petitioners to use and enjoy these waters as they have in the

past, and will not restore the OFS water quality within the statutory 20-year time.

45. Respondent's failure to implement and comply with Sections 403.067, and 373.807, Florida Statutes substantially adversely affects a substantial number of the Petitioners' members' substantial interests described above, as follows:

a. Excessive nutrients stimulate excessive growth of filamentous algae, nuisance algae like Spirogyra, exotic plants such as hydrilla, and cyanobacteria such as Lyngbya wollei, which reflects an imbalance of native flora and that adversely affects a substantial number of Petitioners' members and, because of the BMAP's deficiencies, will increasingly substantially adversely affect a substantial number of the Petitioners' members who wade, swim, snorkel, dive, tube, canoe, and take photographs, because large communities of nuisance algae, Lyngbya wollei and hydrilla are unsightly, can impede navigation, out-compete and reduce native vegetation, and greatly diminish the aesthetic beauty of the natural riverine habitat. Also, the water clarity and color have changed from clear, colorless to murky and tea colored.

b. Silver Springs and Rainbow Springs and related riparian habitat have provided delight to the senses historically but the aesthetic and fine art value of the historically crystal clear spring waters have been greatly diminished and, because of the BMAP's deficiencies, will increasingly substantially adversely affect Petitioners' members who are disappointed and lose appreciation and use of Silver Springs and Rainbow Springs for these purposes because the increased nutrients in the springs significantly reduces water transparency, causes tactilely and visually repulsive algae and cyanobacteria, impedes navigation and eliminates the aesthetic and photogenic attributes of Silver Springs and Rainbow Springs.

c. As water quality has declined, the primary productivity and resulting wildlife utilization of the springs and spring runs has significantly declined and, because of the BMAP's deficiencies, this will increasingly substantially adversely affect Petitioners' members who visit Silver Springs and Rainbow Springs to observe and/or photograph or study the wildlife in and around Silver Springs and Rainbow Springs because such affected persons will have fewer opportunities to observe, photograph and study wildlife using these waters.

d. As water quality has declined, the primary productivity and resulting fish utilization of Silver Springs and Rainbow Springs has significantly declined and, because of the BMAP's deficiencies, will increasingly substantially adversely affect Petitioners' members who visit Silver Springs and Rainbow Springs to fish, study fish, and photograph fish because there are fewer fish to observe, study and pursue fishing and there are fewer hits and less fish caught.

e. DEP's failure to follow Sections 403.067 and 373.807 substantially adversely affects Petitioners' members substantial interests in the use and enjoyment of Silver Springs and Rainbow Springs because the BMAP does not include information demonstrating the projects and strategies could ever meet the TMDL for Silver Springs and Rainbow Springs, and the degraded conditions in these waters will increasingly substantially adversely affect Petitioners' members use and enjoyment of them as described herein.

f. DEP's failure to include the information required by Section 373.807 affects Petitioners' members substantial interests in the use and enjoyment of these water resources

because the required information is necessary for their continued participation and contribution to the effort, to show the BMAP includes actual committed restoration projects and strategies, and without this information DEP fails to provide statutorily required assurance of restoration within 20 years or any reasonable time.

g. The BMAP's lack of statutorily required information and monitoring represents failure to "establish a schedule implementing the management strategies," and failure to "establish a basis for evaluating the plan's effectiveness," and failure to "identify feasible funding strategies for implementing the plan's management strategies." §403.067(7)(a)1, Fla. Stat. These failures preclude transparency and defeat these Petitioners' ability to monitor and evaluate the timeliness of restoration and participate in implementation of the restoration strategies.

46. Diminished water quality in Silver Springs and Rainbow Springs, and failure to implement statutorily required restoration actions, adversely affecting Petitioners' members recreational, scholarly and aesthetic use and enjoyment of these waters is an injury of the type or nature these proceedings are

designed to protect against. The purpose of BMAPs is to restore water quality for the use and enjoyment of the waters subject to the BMAP as soon as practicable with maximum public participation.

47. The relief Petitioners request is of a type appropriate for all petitioners to receive, including the associations on behalf of their members. The relief Petitioners seek is a determination that DEP's agency action is not consistent with the law and remand to the agency for correction of the agency action so that timely restoration will occur, which is relief that is appropriate and common for an association to receive on behalf of its members. Petitioners do not seek money damages. See, *Fla. Home Builders Ass'n v. Dept. of Labor & Emp. Sec.*, 412 So.2d 351, 352-54 (Fla. 1982).

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

48. Petitioners received notice of DEP's June 29, 2018 Order when DEP e-mailed representatives of Petitioners a notification with links dated the same date.

49. Petitioners were granted an extension of time to file a petition regarding the Silver-Rainbow BMAP until January 4, 2019.

(d) A statement of all disputed issues of material fact.

50. The disputed issues of material fact include whether:

a. The Silver-Rainbow BMAP does not identify sufficient management strategies and will not reduce nutrient loading to achieve the TMDL;

b. The Silver-Rainbow BMAP does not include a financially feasible plan or set of projects;

c. The Silver-Rainbow BMAP's cumulative load reductions for point and nonpoint sources of pollution are a much smaller percentage of the total load than the load reductions required by the TMDL Rules for Silver Springs and Rainbow Springs.

d. The Silver-Rainbow BMAP fails to establish the required allocation of the TMDL to point sources and categories of nonpoint sources.

e. The Silver-Rainbow BMAP overestimates nitrogen reduction for projects and strategies;

f. The Silver-Rainbow BMAP fails to identify mechanisms capable of addressing future nutrient loading so that the TMDL could be achieved within 20 years;

g. The Onsite Treatment and Disposal Plan in this BMAP is insufficient and does not "identify cost-effective and financially feasible projects necessary to reduce the nutrient impacts from onsite sewage treatment and disposal systems," nor include "a priority ranking for each system or group of systems that requires remediation."

h. The Silver-Rainbow BMAP fails to include the information required for each project, including: a planning level cost estimate, an estimated completion date; the source and amount of funding by the agencies, an estimate of the project's load reduction, and an implementation plan designed to achieve the TMDL no more than 20 years after a BMAP is adopted.

(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

51. The ultimate facts include that:

a. The Silver-Rainbow BMAP does not identify sufficient management strategies and will not reduce nutrient loading to achieve the TMDL;

b. The Silver-Rainbow BMAP does not include a financially feasible plan or set of projects;

c. The Silver-Rainbow BMAP's cumulative load reductions for point and nonpoint sources of pollution are a much smaller percentage of the total load than the load reductions required by the TMDL Rules for Silver Springs and Rainbow Springs.

d. The Silver-Rainbow BMAP fails to establish the required allocation of the TMDL to point sources and categories of nonpoint sources.

e. The Silver-Rainbow BMAP overestimates nitrogen reduction for projects and strategies;

f. The Silver-Rainbow BMAP fails to identify mechanisms capable of addressing future nutrient loading so that the TMDL could be achieved within 20 years;

g. The Onsite Treatment and Disposal Plan in this BMAP is insufficient and does not "identify cost-effective and financially feasible projects necessary to reduce the nutrient impacts from onsite sewage treatment and disposal systems," nor include "a priority ranking for each system or group of systems that requires remediation.

h. The Silver-Rainbow BMAP fails to include the information required for each project, including: a planning level cost estimate, an estimated completion date; the source

and amount of funding by the agencies, an estimate of the project's load reduction, and an implementation plan designed to achieve the TMDL no more than 20 years after a BMAP is adopted.

(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

52. The specific statutes that entitle Petitioners to relief are discussed throughout this Petition and include subparagraphs of Sections 373.807(1)(b), and 403.067, Florida Statutes. These statutes require the Silver-Rainbow BMAP to "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". §403.067(7)(a)1, Fla. Stat. The BMAP must also "identify the mechanisms that will address potential future increases in pollutant loading". §403.067(7)(a)2, Fla. Stat. And the Silver-Rainbow BMAP must "achieve the nutrient total maximum daily load no more than 20 years after the adoption of a basin management action plan." §373.807(1)(b)8, Fla. Stat. The Silver-Rainbow BMAP fails to include sufficient strategies and projects to comply with these laws, as described above.

(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.

WHEREFORE, Petitioners respectfully request the following relief: this petition be forwarded to the Division of Administrative Hearings for an administrative hearing pursuant to Section 120.569 and 120.57, Florida Statutes; the Silver-Rainbow BMAP be determined to be inconsistent with Florida Law; the proceedings be remanded by the Division of Administrative Hearings for further development of the Silver-Rainbow BMAP consistent with the laws; and any other relief that is appropriate under the circumstances.

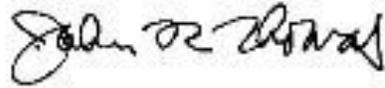
Certificate for E-Filing

I HEREBY CERTIFY that the original signed document will be retained by Petitioner for the duration of the proceeding and any subsequent appeal or subsequent proceeding in that cause, and Petitioners will produce it upon the request of other parties.

Certificate of Service

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished by e-mail to Tom Frick, Kenneth Hayman, Esq., and

Lea Crandall, DEP Agency Clerk, on this 1st day of February,
2019.

A handwritten signature in black ink, appearing to read "John R. Thomas". The signature is written in a cursive style with some loops and flourishes.

John R. Thomas, Esq.
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Counsel for Petitioner