

First DCA Reverses Florida Department of Environmental Protection's Basin Management Action Plans for Outstanding Florida Springs

In 1999, the Legislature adopted the Watershed Restoration Act because the Legislature found that developing the total maximum daily load ("TMDL") program "will promote improvements in water quality throughout the state through the coordinated control of point and nonpoint sources of pollution." In 2005, the Legislature created section 403.067(7), Florida Statutes, authorizing the Department of Environmental Protection ("DEP") to develop Basin Management Action Plans ("BMAPs") to "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." In 2016, the Legislature enacted the Florida Springs and Aquifer Protection Act (the "Springs Act"), which required DEP to adopt BMAPs for impaired Outstanding Florida Springs.

The Appellants, which included the Sierra Club, challenged the BMAPs for certain Outstanding Florida Springs concerning the pollutant nitrogen, which the Department assessed in the form of nitrate. Among other claims, Appellants argued that DEP failed to comply with sections 403.067(6)(b) and 373.807(1)(b) in creating the BMAPs. Appellants argued that the TMDLs that DEP had previously adopted for the Outstanding Florida Springs at issue included an "initial allocation of allowable pollutant loads among point and nonpoint sources," as described in section 403.067(6)(b) such that the BMAPs were required to include a "detailed allocation to specific point sources and specific categories of nonpoint sources" pursuant to that subsection. The administrative law judge's ("ALJ") recommended order found that while the previously adopted TMDL rules for the Outstanding Florida Springs at issue "established reasonable and equitable allocations of the TMDL between point versus nonpoint types of sources of pollution," they "did not establish an initial allocation of allowable pollutant loads among point and nonpoint sources" such that the requirement of a detailed allocation in the BMAPs was triggered. The final order adopted the ALJ's interpretation and Appellants filed a timely appeal.

The First DCA reviewed the ALJ's interpretation of the statutes de novo. The Court first examined section 403.067(b), which when read together require that DEP develop TMDL rules allocating each TMDL "between or among point and nonpoint sources" and that if only an initial allocation "among point and nonpoint sources" is made, the subsequent BMAP must make a "detailed allocation" among "specific point sources and specific categories of nonpoint sources." Thus, section 403.067(b) contemplates TMDL rules with either initial allocations to point and nonpoint sources broadly or detailed allocations to specific point sources and categories of nonpoint sources. If only an initial, broad allocation is included in the TMDL, the BMAP must include a more detailed allocation.

The First DCA held that section 373.807(1)(b)(7) required that BMAPs for Outstanding Florida Springs include an identification of each point source or category of nonpoint sources. 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 necessary load reductions to meet the TMDL. DEP's allocations of load reductions in the BMAPs at issue allocated the reductions to the entire basin, not to any point or nonpoint

source. Accordingly, the First DCA reversed DEP's final order and remanded the case for further proceedings.