STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

FLORIDA SPRINGS COUNCIL, INC.,

Petitioner,

vs. Case No. 25-0274RP

FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION,

Respondent,

and

ST. JOHNS WATER MANAGEMENT DISTRICT AND SOUTHWEST FLORIDA WATER MANAGEMENT DISTRICT,

Intervenors.
_____/

FINAL ORDER

Pursuant to notice, a final hearing was held in this case on March 18, 2025, in Tallahassee, Florida, before E. Gary Early, a designated administrative law judge of the Division of Administrative Hearings (DOAH).

APPEARANCES

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For Intervenor St. Johns River Water Management District:

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For Intervenor Southwest Florida Water Management District:

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STATEMENT OF THE ISSUE

The issue to be determined is whether the Department of Environmental Protection's (DEP) Proposed Rules 62-41.400, 62-41.401, and 62-41.402 (Proposed Rules) regarding the standards for consumptive use permits (CUP)[1] that may affect Outstanding Florida Springs (OFSs) or their spring runs, are invalid exercises of delegated legislative authority.

PRELIMINARY STATEMENT

The issues in this case have a lengthy history going back to 2016. However, as material to this proceeding, DEP published the Notice of Proposed Rule on December 10, 2024, in Volume 10, Issue 239 of the Florida Administrative Register (Notice of Proposed Rule). The Notice of Proposed

[1] The Southwest Florida Water Management District refers to permits for the withdrawal of groundwater as Water Use Permits or WUPs. They are identical to CUPs in all respects. For ease of reference, the permits at issue will be referred to as CUPs, regardless of the reviewing agency.

Rule announced that a hearing would be held, if requested, on January 6, 2025. Petitioner, the Florida Springs Council, Inc. (Petitioner or FSC), requested and attended the hearing.

On January 16, 2025, Petitioner filed its Petition to Determine the Invalidity of Proposed Rules (Petition) challenging the Proposed Rules as invalid exercises of delegated legislative authority. The Petition was assigned to the undersigned, and the final hearing was scheduled for March 18 through 20, 2025.

On February 19, 2025, the St. Johns River Water Management District (SJRWMD) and the Southwest Florida Water Management District (SWFWMD) moved to intervene in support of the Proposed Rules. Their Motions to Intervene were granted over Petitioner's objection on February 25, 2025.

On March 14, 2025, the parties filed their Joint Pre-hearing Stipulation, which included issues of fact and law remaining for disposition. Given that the burden of proof in this case rests with Petitioner, the issues of fact identified by Petitioner are set forth as establishing the factual issues remaining for disposition. The issues of fact and law are as follows:

> ISSUES OF FACT TO BE LITIGATED
>
> Florida Springs Council contends there are no facts to be litigated other than those facts related to standing.
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> DEP and Intervenors contend that for Outstanding Florida Springs, whether the proposed rules provide uniform rules for issuing permits which prevent groundwater withdrawals that are harmful to the water resources and provide a uniform definition of the term "harmful to the water resources" to provide

> water management districts with minimum standards necessary to be consistent with the overall water policy of the state.
>
> ISSUES OF LAW TO BE DETERMINED
>
> Whether Proposed Rules 62-41.400, 62-41.401, and 62-41.402, F.A.C., are an invalid exercise of the delegated legislative authority granted under Florida Statute 373.219(3), as defined by subparagraphs 120.52(8)(b), (c), (d) and (e), Fla. Stat.
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> Florida Springs Council contends that an issue of law to be determined is whether the Proposed Rules are substantively equivalent to existing water management district rules and Rule 62-41 concerning conditions for issuance of consumptive use permits.

On March 17, 2025, the parties filed an Addendum to Joint Pre-hearing Stipulation by which the issues for disposition were narrowed. As to the scope of this proceeding, FSC stipulated that "the only issues to be determined in this case are whether the Proposed Rules are an 'invalid exercise of delegated authority' under section 120.52(8)(b) and (c), Fla. Stat." Thus, this proceeding is limited to whether DEP exceeded its grant of rulemaking authority, and whether the Proposed Rules enlarge, modify, or contravene the specific provisions of law implemented.

Among the subjects stipulated by DEP in the Addendum to Joint Pre-hearing Stipulation were the factual elements of Petitioner's standing. Those facts are sufficient to demonstrate that Petitioner has standing as an association acting on behalf of its members in this proceeding, without the necessity of further evidence.

The Joint Pre-hearing Stipulation, as amended, constitutes "the final agreed-upon 'executive summary' as to what the impending trial is about and the specific issues that remain on the table." *Palm Beach Polo Holdings, Inc. v. Broward Marine, Inc.*, 174 So. 3d 1037 (Fla. 4th DCA 2015).

Prior to the hearing, FSC filed a Motion for Official Recognition, and DEP filed a Motion in Limine, both directed to Petitioner's Exhibit 39, a recording of a November 4, 2015, meeting of the Senate EPC Committee at which Senate Bill 552 (SB 552), which was ultimately passed, signed, and enacted as chapter 2016-1, Laws of Florida, was discussed. The Motion for Official Recognition was granted and the Motion in Limine was denied, with the opportunity for the parties to explain the relevance of the committee discussions in their Proposed Final Orders being preserved.

The burden of proof established in section 120.56(2), Florida Statutes, for challenging proposed rules provides that "[t]he petitioner has the burden to prove by a preponderance of the evidence that the petitioner would be substantially affected by the proposed rule. The agency then has the burden to prove by a preponderance of the evidence that the proposed rule is not an invalid exercise of delegated legislative authority as to the objections raised."

The final hearing was convened as scheduled on March 18, 2025, and was completed on that date.

SJRWMD called Clay Coarsey, P.E., its Director of the Division of Water Supply Planning & Assessment, who was tendered and accepted as an expert in the water resources branch of civil engineering, hydrogeology, and surface and groundwater modelling. SJRWMD Exhibits 1 through 5 were received in evidence.

SWFWMD called Darrin W. Herbst, P.G., its Chief of the Bureau of Water Use Permitting, who was tendered and accepted as an expert in hydrogeology and groundwater modelling. SWFWMD Exhibit 1 was received in evidence.

DEP did not call any witnesses, but adopted the testimony of Mr. Coarsey and Mr. Herbst as its own. DEP Exhibits 3 through 9.c. were received in evidence.

Petitioner did not call any witnesses. Petitioner's Exhibits 30, 39, 47 through 62, and 66 were received in evidence.

The one-volume Transcript of the final hearing was filed on April 15, 2025. Ten days from the date of the filing of the Transcript was established as the time for filing post-hearing submittals, making April 25, 2025, the deadline. The parties timely filed Proposed Final Orders, which have been considered in the preparation of this Final Order.

References to statutes are to Florida Statutes (2024) unless otherwise noted.

FINDINGS OF FACT

The Parties

1. FSC is a Florida not-for-profit membership-based corporation, incorporated on June 1, 2016. FSC members include individuals and nonprofit organizations. FSC has an interest, on behalf of its members, to work to restore, preserve, and protect Florida's freshwater springs and spring-fed rivers, including OFSs and the Floridan Aquifer. DEP, SJRWMD, and SWFWMD stipulated that a substantial number of FSC's members will suffer a substantial and immediate "injury in fact" within the "zone of interest" protected by the statutes that the proposed rules implement.

2. DEP is the administrative agency of the State of Florida charged with, among other things, the administration and enforcement of chapter 373, and the administrative rules promulgated thereunder; protecting Florida's water resources; and exercising general supervisory authority over Florida's five water management districts (WMD).

3. The SJRWMD and the SWFWMD are WMDs created by section 373.069. They have the responsibility to conserve, protect, manage, and control the water resources within their geographic boundaries, and have authority over the review and action on applications for CUPs within their boundaries, including those affecting OFSs.

Water Management District CUP Rules

4. Prior to the enactment of section 373.219(3), WMDs were empowered to individually "require such permits for consumptive use of water and … impose such reasonable conditions as are necessary to assure that such use is consistent with the overall objectives of the district … and is not harmful to the water resources of the area." § 373.219(1), Fla. Stat. There was no requirement that a WMD's permit conditions or objectives be consistent or uniform with those of the other districts.

5. Over the period from 2012 through 2014, the five WMDs engaged in an effort to establish consistent conditions for the issuance of CUPs that would be applied by each, which was known as consumptive use permitting consistency, or CUPCon. As a result, four of the five WMDs agreed upon substantially similar conditions for CUP issuance.

6. The permitting standards that emerged from the CUPCon process were, in substance, adopted in Florida Administrative Code Chapters 40A-2 by the Northwest Florida Water Management District (effective May 29, 2014); 40B-2 by the Suwannee River Water Management District (effective March 24, 2014); 40C-2 by SJRWMD (August 14, 2014); and 40D-2 by SWFWMD (effective May 19, 2014) (the CUPCon Rules).

2016 Legislation

7. In 2016, the Florida Legislature passed SB 552, which was enacted as chapter 2016-1, Laws of Florida, identified as "[a]n act relating to environmental resources" (the 2016 legislation). Among the numerous provisions of law affected by the 2016 legislation was the creation of section 373.219(3), which provides that:

> For Outstanding Florida Springs, the department shall adopt uniform rules for issuing permits which prevent groundwater withdrawals that are harmful to the water resources and adopt by rule a uniform definition of the term "harmful to the water resources" to provide water management districts with minimum standards necessary to be consistent with the overall water policy of the state. This subsection does not prohibit a water management district from adopting a definition that is more protective of the water resources consistent with local or regional conditions and objectives.

8. Thus, rather than leaving it up to the WMDs to apply their own standards, or agree on generally consistent standards, the Legislature made mandatory the uniformity of standards for groundwater withdrawals from OFSs and their spring runs, and charged DEP with the duty to develop rules adopting those standards.

9. Applying the plain meaning of section 373.219(3), DEP is required to adopt uniform rules that:

> 1. allow for the issuance of CUPs that will prevent groundwater withdrawals that are harmful to the water resources;
>
> 2. define the term "harmful to the water resources";
>
> 3. establish minimum standards consistent with the overall water policy of the state; and
> 4. do not prohibit water management districts from adopting a definition of "harmful to the water resources" that is more protective of the water resources.

10. Also included as part of the 2016 legislation was the enactment of section 373.0465, which created the Central Florida Water Initiative (CFWI) area, consisting of Orange, Osceola, Polk, Seminole, and southern Lake Counties. The CFWI was established because the Floridan Aquifer system had been determined to be "locally approaching its sustainable limits of use." § 373.0465(1)(b) Fla. Stat. Among the duties established by the CFWI to be performed by DEP, the affected WMDs, and the Department of Agriculture and Consumer Services were the development of "a single hydrologic planning model to assess the availability of groundwater" in the CFWI; adoption of uniform CUP rules by DEP to be applied by the WMDs in the CFWI area; and the adoption of "[a] single, uniform definition of the term 'harmful to the water resources' consistent with the term's usage in s. 373.219." § 373.0465(2)(b)4., and (2)(d), Fla. Stat.

11. In 2021, DEP adopted CFWI rules 62-41.300 through 62-41.305, (CFWI Rules) to be applied by the affected WMDs to withdrawals in the CFWI area. The CFWI conditions for issuance in rule 62-41.301 are substantively identical to the conditions for issuance established by the CUPCon rules.

12. Finally, as pertinent to this case, the 2016 legislation established the Florida Springs and Aquifer Protection Act (FSAPA), codified as chapter 373, part VIII, which includes sections 373.801 through 373.813.

13. The FSAPA identifies historic first-magnitude springs and six other named springs as OFSs. For those OFSs, the FSAPA established a framework by which DEP and the WMDs are to collaboratively delineate priority focus areas for impaired OFSs; establish minimum flows and levels (MFLs) and recovery and prevention strategies for each OFS; and adopt a total maximum daily load (TMDL) for nutrients and a basin management action plan (BMAP) for each OFS. Section 373.813(1) provides that, for OFSs, DEP "shall adopt rules to improve water quantity and water quality to administer *this part*, as applicable." (emphasis added).

14. Section 373.219(3) is not a part of the FSAPA.

Proposed Rules

15. The Proposed Rules published on December 23, 2024, as supplemented by the February 11, 2025, Notice of Change, provide:

> 62-41.400 Outstanding Florida Springs, Scope of Rules and Definitions.
>
> (1) Rules 62-41.400 through 62-41.402, F.A.C., implement section 373.219, F.S. These supplemental rules provide the basis for the evaluation of consumptive uses of water to ensure they are not harmful to an Outstanding Florida Spring or its spring run as defined in subsections 373.802(5) and 373.802(8), F.S.
>
> (2) The phrases "Consumptive Use Permit," "Consumptive Use Permitting," and "Consumptive Use Applicants" are synonymous with "Water Use Permit," "Water Use Permitting," and "Water Use Applicants," respectively, as used by agencies implementing Part II of Chapter 373, F.S.
>
> (3) "Agency" or "agencies" means the Department of Environmental Protection and the water management districts as entities with the authority to implement Part II of Chapter 373, F.S.
>
> (4) These supplemental rules shall be utilized as minimum standards in the evaluation of consumptive use permits to ensure they are not harmful to an Outstanding Florida Spring or its spring run. The agencies shall implement these supplemental rules in conjunction with their consumptive use permitting or water use permitting rules upon determination that a proposed water use potentially impacts an Outstanding Florida Spring. The agencies shall update their rules as necessary to be consistent with these minimum standards.
>
> (5) These supplemental rules do not prohibit an agency from adopting a definition of the term "harmful to the water resources" that is more

protective of the water resources consistent with local or regional conditions and objectives.

Rulemaking Authority: 373.016, 373.026, 373.0421, 373.043, 373.171, 373.216, 373.217, 373.219, 373.223, 373.2234, 373.801, 373.802, 373.813, FS. Law Implemented: 373.219, 373.802, FS. New: xx-xx-xxxx.

62-41.401 Outstanding Florida Springs, Uniform Definition of Harmful to the Water Resources.

(1) Harmful to the Water Resources for Outstanding Florida Springs means a consumptive use that adversely impacts an Outstanding Florida Spring or its spring run in one or more of the following ways:

(a) Causing harmful water quality impacts to the Outstanding Florida Spring or its spring run resulting from the withdrawal or diversion;

(b) Causing harmful water quality impacts from dewatering discharge to the Outstanding Florida Spring or its spring run;

(c) Causing harmful saline water intrusion or harmful upconing to the Outstanding Florida Spring or its spring run;

(d) Causing harmful hydrologic alterations to natural systems associated with an Outstanding Florida Spring or its spring run, including wetlands or other surface waters; and

(e) Otherwise causing harmful hydrologic alterations to the water resources of the Outstanding Florida Spring or its spring run.

(2) Consistent with paragraph (1), the applicant shall provide reasonable assurance, using the best available information, that there are no adverse impacts caused by the withdrawal or diversion, on an individual or cumulative basis, to the extent that:

(a) The withdrawal or diversion does not induce movement of a contamination plume or alter the rate or direction of the movement of a contamination plume towards an Outstanding Florida Spring or its spring run such that the alteration causes harmful water quality impacts as evidenced by the predicted

influence the water withdrawals would have on inducing movement of the contamination plume or as indicated by a sustained increase in background levels in contaminant concentrations.

(b) Dewatering discharges do not cause harmful water quality impacts to the Outstanding Florida Spring or its spring run. Dewatering water must be retained onsite unless the applicant demonstrates it is not technically or environmentally feasible to retain the dewatering water onsite. Applicants who have obtained and are in compliance with a National Pollutant Discharge Elimination System (NPDES) or Environmental Resource Permit (ERP) for dewatering shall be considered to not cause harmful water quality impacts from dewatering discharge to receiving waters.

(c) Withdrawals do not cause an increase in total dissolved solids (TDS) or chloride concentrations that adversely affects the Outstanding Florida Spring or its spring run. The agencies will not consider saline water intrusion as harmful if it is the result of seasonal fluctuations; climatic conditions; or operation of the Central and Southern Flood Control Project, secondary canals, or stormwater systems. As part of the consideration of whether the use will cause harmful saline water intrusion or upconing, the following factors must be considered, as applicable:

1. Whether there is a sustained amount and rate of increase of TDS or chloride concentrations in the Outstanding Florida Spring;

2. Whether there would be adverse impacts to values or functions of wetlands or other surface waters associated with an Outstanding Florida Spring or its spring run.

(d) Hydrologic alterations to the spring resulting from withdrawals do not cause adverse impacts to the aquatic or wetland dependent flora or fauna in the spring or its spring run.

(3) To provide reasonable assurance that harm to the water resources will not occur due to the proposed water withdrawal or diversion, the following information shall be submitted as applicable:

(a) An assessment inclusive of any predicted hydrologic alterations to an Outstanding Florida Spring or its spring run caused by the withdrawal or diversion. The assessment will include any predicted changes in hydrology, or changes in aquatic or wetland flora or fauna at an Outstanding Florida Spring or its spring run. An applicant shall only be required to address its relative contribution of harm to the Outstanding Florida Spring or its spring run associated with its water withdrawal.

(b) A summary of any monitoring or modeling analysis performed and electronic copies of any modeling files.

(c) Any additional materials utilized in the analysis to provide reasonable assurance that harm, as defined above, will not occur due to the withdrawal or diversion, including aerial photographs, topographic maps, hydrologic data, environmental assessments, or other relevant information.

Rulemaking Authority: 373.016, 373.026, 373.0421, 373.043, 373.171, 373.216, 373.217, 373.219, 373.223, 373,2234, 373.801, 373.802, 373.813 FS. Law Implemented: 373.219 FS. New: xx-xx-xxxx.

62-41.402 Outstanding Florida Springs, Uniform Conditions for Issuance of Permits.

(1) No permit issued by the agencies for the consumptive use of water shall authorize groundwater withdrawals that are harmful to the water resources as provided in paragraph (3)(g), and each permittee shall meet the criteria established in section 62-41.401, F.A.C.

(2) In order to prevent groundwater withdrawals that are harmful to an Outstanding Florida Spring, an applicant seeking a consumptive use permit, renewal, or modification, whose withdrawal potentially impacts an Outstanding Florida Spring or its spring run must provide reasonable assurance that the proposed consumptive use of water, on an individual and cumulative basis:

(a) Is a reasonable-beneficial use;

(b) Will not interfere with any presently existing legal use of water; and

(c) Is consistent with the public interest.

(3) In order to provide reasonable assurances that the consumptive use is reasonable-beneficial, an applicant shall demonstrate that the consumptive use:

(a) Is a quantity that is necessary for economic and efficient use;

(b) Is for a purpose and occurs in a manner that is both reasonable and consistent with the public interest;

(c) Will utilize a water source that is suitable for the consumptive use;

(d) Will utilize a water source that is capable of producing the requested amount;

(e) Will utilize the lowest quality water source that is suitable for the purpose and is technically, environmentally, and economically feasible, except for the following agricultural water uses;

1. Water used for washing hands during and after harvest activities;

2. Water that is applied in any manner that directly contacts produce during or after harvest activities (for example, water applied for washing or cooling); and

3. Water used to make ice that directly contacts produce during or after harvest activities.

(f) Will not cause harm to existing offsite land uses resulting from hydrologic alterations;

(g) Will not cause harm to an Outstanding Florida Spring or its spring run a in any of the following ways:

1. Will not cause harmful water quality impacts to an Outstanding Florida Spring or its spring run resulting from the withdrawal or diversion;

2. Will not cause harmful water quality impacts from dewatering discharge to an Outstanding Florida Spring or its spring run;

> 3. Will not cause harmful saline water intrusion or harmful upconing to an Outstanding Florida Spring or its spring run;
>
> 4. Will not cause harmful hydrologic alterations to an Outstanding Florida Spring or its spring run; and
>
> 5. Will not otherwise cause harmful hydrologic alterations to an Outstanding Florida Spring or its spring run;
>
> (h) Is in accordance with any minimum flow or level and implementation strategy established pursuant to sections 373.042 and 373.0421, F.S.; and
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> (i) Will not use water reserved pursuant to subsection 373.223(4), F.S.
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> Rulemaking Authority: 373.016, 373.026, 373.0421, 373.043, 373.171, 373.216, 373.217, 373.219, 373.223, 373.2234, 373.801, 373.802, 373.813, FS. Law Implemented: 373.219, 373.223, FS. New: xx-xx-xxxx.

a. Whether DEP exceeded its grant of rulemaking authority – section 120.52(8)(b).

16. Here, DEP was tasked with the duty to adopt rules that meet the criteria listed in paragraph 9.[2] Facially, the Proposed Rules provide standards for the issuance of CUPs to prevent groundwater withdrawals that are harmful to the water resources (62-41.402); define "harmful to the water resources" (62-41.401); establish minimum standards consistent with the overall water policy of the state (62-41.400(4)); and do not prohibit WMDs from adopting more stringent standards (62-41.400(5)). DEP has proposed to adopt only rules that implement or interpret the specific powers and duties

[2] The Proposed Rules include a string-cite of sections of chapter 373 that authorize the adoption of rules as rulemaking authority. However, the parties, both in the Joint Prehearing Stipulation and at the hearing, focused exclusively on whether the Proposed Rules are an invalid exercise of delegated legislative authority under section 373.219(3). *See*, Joint Pre-hearing Stipulation, part VIII, which identifies as Issues of Law to be Determined whether the Proposed Rules "are an invalid exercise of the delegated legislative authority granted under Florida Statute 373.219(3), as defined by subparagraphs 120.52(8)(b), (c), (d) and (e), Fla. Stat." The challenge was subsequently narrowed to include only section 120.52(8)(b) and (c). Thus, the review of whether DEP has adequate rulemaking authority to adopt the Proposed Rules is limited to whether section 373.219(3) provides such authority.

granted by section 373.219(3), and in so doing has not exceeded its grant of rulemaking authority.

b. Whether the Proposed Rules enlarge, modify, or contravene the specific provisions of law implemented – section 120.52(8)(c).

17. The preponderance of the evidence demonstrates that DEP took a narrow view of the scope of section 373.219(3), and limited the reach of the Proposed Rules accordingly. That decision was purposeful and, regardless of the policy arguments that can be made, not facially inconsistent with the plain meaning of that statutory subsection.

18. As to whether the Proposed Rules modify or contravene the specific provisions of section 373.219(3), the Proposed Rules are substantially similar to, and provide basically the same level of protection for, an OFS as do the CUPCon rules and the CFWI Rules for other groundwater withdrawals.

19. The Proposed Rules meet the facial requirements established by the Legislature. The Proposed Rules do not enlarge the statute implemented, they do not modify the statute implemented, and they do not contravene the statute implemented. Petitioner argues that the Proposed Rules do not go far enough, and that they may be applied so as to allow harm to OFSs. However, whether the rules as applied may harm OFSs is a matter for consideration on a case-by-case basis as CUPs undergo review and, potentially, challenge. Under the narrow test in section 120.52(8)(c), the Proposed Rules pass muster.

20. Section 373.223 which, along with section 373.219, is a law implemented by Proposed Rule 62-41.402, establishes a "three-prong" test that must be met in order for a CUP to be issued. Under that test, an applicant must demonstrate that the proposed use of water:

> (1)(a) Is a reasonable-beneficial use as defined in s. 373.019;
> (b) Will not interfere with any presently existing legal use of water; and
> (c) Is consistent with the public interest.

21. Section 373.019(16) defines reasonable-beneficial use as "the use of water in such quantity as is necessary for economic and efficient utilization for a purpose and in a manner which is both reasonable and consistent with the public interest."

22. The test established in section 373.223, along with the definition of reasonable-beneficial use, have been incorporated in, and adopted by, Proposed Rule 62-41.402(2) and (3). Thus, the Proposed Rule implements the listed statute. Whether the reasonable-beneficial use test is correctly applied in practice is an issue for another proceeding.

Application of Permitting Standards

23. Mr. Coarsey and Mr. Herbst testified at length as to how the CUPCon rules are applied to prevent groundwater withdrawals that are harmful to water resources, including OFSs within district boundaries.

24. When an application for a CUP is made, an evaluation is made to determine whether the withdrawal is for a reasonable-beneficial use. The potential for harmful hydrologic alterations is examined, which includes groundwater modelling simulations to predict impacts, including projected drawdown of groundwater in the area of the proposed withdrawal, the impact of any drawdown on natural systems, including lakes, wetlands, rivers, streams, and springs, and the potential for saline water intrusion.

25. The extent of any drawdown is determined by imputing the amount of water requested by the CUP application into a groundwater model that calculates the drawdown across the physical confines of the model. Once the limit of the drawdown is calculated, it is overlain over potential water resource features. Those features are then evaluated to determine their current condition, and whether they can tolerate the calculated drawdown to determine whether the impact, if any, is expected to be harmful to the water resource. Each drawdown from a proposed permit, and its effect on a water resource, including an OFS, depends on the evaluation of that permit on a

case-by-case basis. The Proposed Rules would be applied to meet the same goal.

26. If an OFS and its spring run has an established minimum flow and level (MFL), that is considered to be the harm level. Any withdrawal calculated to cause a drawdown beyond the MFL would be significant harm. Whether a proposed withdrawal will cause harm is based on the groundwater modeling, and its predicted impacts and effects on the MFL through the duration of the permit. Failure to comply with any MFL and implementation strategy is a failure of a permit condition, warranting denial under both the CUPCon rules and the Proposed Rules.

27. Mr. Coarsey testified to "a five-prong assessment" that applies the CUPCon standards to determine whether a permit would cause harm. Those "five-prongs" are substantially identical to Proposed Rules 62-41.402(3)(g)1. through (3)(g)5. If an applicant fails any one of the five prongs, the application will be denied.

28. If a withdrawal is determined not to cause harm to water resources in the modeled area, a permit is issued with conditions derived from the CUPCon rules and, when overlain by the area covered by the CFWI rule, a combination of the two. As established, the same conditions are incorporated in the Proposed Rules.

29. Petitioner demonstrated that several OFSs in the SJRWMD have been shown to have experienced harm from groundwater withdrawals, and that they are currently in recovery status. Petitioner cited to the SJRWMD Wekiva Basin MFL reevaluation for the period measured from 2014 through 2018, which was released in January 2024. The reevaluation was undertaken as SJRWMD collected more data, and was able to apply a new groundwater model, the Northern District Model, Version 5 (NDM v.5), which was developed in 2016 by SJRWMD and SWFWMD. NDM v.5 is capable of addressing cumulative impacts of withdrawals to water resources, including OFSs, across a large area, and across district boundaries. The cumulative

impacts include modelling of the effects on groundwater from current permits as well as proposed future permits.

30. Mr. Coarsey testified that the harm to OFSs, as shown in the Wekiva Basin MFL reevaluation, was not with the rules that were in effect and being applied to groundwater withdrawal applications. Rather, he indicated that the issue was the inadequacy of the groundwater flow models used to measure projected impacts. Previously, models available were small-scale models, which failed to accurately assess the effects of withdrawals outside of the boundary of the model. Since the development of the NDM v.5, impacts can be more accurately measured and, if previously permitted withdrawals are found to be causing harm, made subject to a recovery strategy. As stated by Mr. Coarsey:

> the problem wasn't with the rules that were in effect. The problem was with our tools that we have in our groundwater flow models and not having models large enough to be able to assess the cumulative impacts from distant withdrawals on an Outstanding Florida Spring. If we were sitting here ten years ago with the tools we have available, I would be telling you that everything's fine. But the fact that we have new tools that are able to properly assess the impacts from the cumulative withdrawals that's how we know now that there are a problem with this springs with groundwater withdrawals.

31. Mr. Coarsey's testimony that the current CUPCon standards, which are included in the Proposed Rules, are sufficient to prevent harm to OFSs when paired with the newer and more robust groundwater model was unrebutted.

32. The testimony and evidence of how the CUPCon rules are applied provided background and detail as to how the comparable Proposed Rules are expected to be applied. However, not to be overly simplistic, and not intending to minimize the legitimate concerns of Petitioner as to the long-term health of OFSs, the way in which the Proposed Rules will be applied is

beyond the scope of the issues in this proceeding, those being the nature and extent of DEP's rulemaking authority, and the Proposed Rules' fidelity to the law implemented.

Legislative Intent

33. Petitioner argues that, as a matter of law, the legislative intent behind chapter 2016-1, Laws of Florida, was to provide increased and enhanced levels of protection for OFSs. Thus, in its view, simply consolidating existing standards into a uniform rule to be applied by each of the WMDs when assessing CUP withdrawals affecting OFSs does not provide such increased and enhanced protection.

34. The law being implemented by the Proposed Rules, section 373.219(3) is, on its face, nothing more than a requirement that DEP make uniform the rules pertaining to OFSs, including a definition for withdrawals that are harmful to the water resources, to be applied by the WMDs.

35. Petitioner's position may well be meritorious as applied to the FSAPA, which was enacted along with section 373.219(3) as part of chapter 2016-1, Laws of Florida.

36. The FSAPA includes legislative findings regarding the importance of OFSs, requires measures for the protection and enhancement of water quantity and water quality, and prohibits certain activities as part of an OFS's basin management action plan. Importantly, the FSAPA includes specific rulemaking authority for DEP and the Department of Agriculture and Consumer Services to "adopt rules *to improve* water quantity and water quality," and to initiate rulemaking "to implement agricultural best management practices *for improving and protecting*" OFSs. However, the FSAPA is not the law being implemented by the Proposed Rules.

37. In contrast to the FSAPA, section 373.219(3) provides no affirmative mechanisms by which water quantity and water quality at OFSs can be enhanced and improved, and contains no comparable spring "improvement" requirement.

38. The issue in this proceeding is not the policy behind the Proposed Rules, but whether DEP's Proposed Rules are authorized by the provisions of law cited for their authority and implementation. The preponderance of the evidence establishes that the creation of uniform rules, to be applied across district boundaries and which provided a definition of "harm" as required, facially met those standards.

Conclusion

39. This is not a case in which a decision must be made as to whether the Proposed Rules fail to establish adequate standards for DEP permitting decisions (section 120.52(8)(d)), or whether DEP's adoption of the Proposed Rules was supported by facts or logic, or was taken irrationally, without thought or reason so as to be arbitrary or capricious (section 120.52(8)(e)). Rather, the issues are limited to whether the Proposed Rules exceed DEP's grant of rulemaking authority, or enlarge, modify, or contravene the law implemented. DEP chose to apply section 373.219(3) narrowly – but literally. Its decision was in the bounds of reason, and was not error.

CONCLUSIONS OF LAW

Jurisdiction

40. DOAH has jurisdiction of the subject matter and the parties to this proceeding. §§ 120.569 and 120.57(1), Fla. Stat. (2024).

41. Section 120.56(1)(a) provides that "any person substantially affected by a rule or a proposed rule may seek an administrative determination of the invalidity of the rule on the ground that the rule is an invalid exercise of delegated legislative authority."

Standing

42. DEP and the Intervenors stipulated that a substantial number of FSC's members will suffer a substantial and immediate "injury in fact" within the "zone of interest" protected by the statutes that the Proposed

Rules implement. In light of that stipulation, as described below, and without the necessity of FSC presenting evidence, FSC has standing and would be adversely affected by the adoption of the Proposed Rules.

43. Associations have standing to bring a rule challenge when:

> a substantial number of [the association's] members, although not necessarily a majority, are "substantially affected" by the challenged rule. Further, the subject matter of the rule must be within the association's general scope of interest and activity, and the relief requested must be the type appropriate for a trade association to receive on behalf of its members.

Florida Home Builders Assn' v. Dep't of Lab. and Emp. Sec., 412 So. 2d 351, 353-54 (Fla. 1982); *see also NAACP, Inc. v. Bd. of Regents*, 863 So. 2d 294, 298 (Fla. 2003).

44. The stipulated facts are sufficient to demonstrate that the substantial interests of a substantial number of Petitioner's members would be affected by the establishment of standards for consumptive use permits authorizing withdrawals of groundwater that could affect the water resources and ecology of those water bodies.

45. The stipulated facts are sufficient to demonstrate that the subject matter of the rule is within FSC's general scope of interest and activity, and that the relief requested is of a type appropriate for FSC to receive on behalf of its members – i.e., a determination of the validity of the rules.

46. Based thereon, Petitioner is substantially affected in a manner and degree sufficient to confer administrative standing in this case. *See, e.g., Abbott Labs. v. Mylan Pharms.*, 15 So. 3d 642, 651 n.2 (Fla. 1st DCA 2009); *Dep't of Pro. Regul., Bd. of Dentistry v. Fla. Dental Hygienist Ass'n*, 612 So. 2d 646, 651 (Fla. 1st DCA 1993); *see also Cole Vision Corp. v. Dep't of Bus. & Pro. Regul.*, 688 So. 2d 404, 407 (Fla. 1st DCA 1997)(recognizing that "a less demanding standard applies in a rule challenge proceeding than in an action

at law, and that the standard differs from the 'substantial interest' standard of a licensure proceeding.").

47. Intervenors are two of Florida's five WMDs, and are identified as being responsible for the implementation and application of the Proposed Rules. Thus, as named entities that are substantially affected by the Proposed Rules, Intervenors have standing in this case.

Nature of the Proceeding and Burden of Proof

48. This is a de novo proceeding. § 120.56(1)(e), Fla. Stat.

49. In a challenge to a proposed agency rule, the petitioner has the burden of "going forward," and the agency then has the burden of proving by a preponderance of the evidence that the proposed rule is not an invalid exercise of delegated legislative authority for the objections raised. § 120.56(2)(a), Fla. Stat. By stipulation, Petitioner met its burden of "going forward."

50. When a substantially affected person seeks a determination of the invalidity of a proposed rule pursuant to section 120.56(2), the proposed rule is not presumed to be valid or invalid. § 120.56(2)(c), Fla. Stat.

51. The challenge to the validity of the Proposed Rules, and whether they are legislatively authorized, involves only "the facial validity of [the Proposed Rules], not to determine their validity as applied to specific facts, or whether the agency has placed an erroneous construction on them. Accordingly, we need only to examine the statutory basis for these rules to determine if the agency has exceeded its authority." *Fairfield Cmtys. v. Fla. Land and Water Adjudicatory Comm'n*, 522 So. 2d 1012, 1015 (Fla. 1st DCA 1988).

Rulemaking Standards

52. Section 120.52(8) defines an "invalid exercise of delegated legislative authority." The provisions identified in the Addendum to the Joint Pre-hearing Stipulation establish that the bases under which the Proposed Rules are alleged to constitute an invalid exercise of delegated legislative authority are limited to the following:

> (8) "Invalid exercise of delegated legislative authority" means action that goes beyond the powers, functions, and duties delegated by the Legislature. A proposed or existing rule is an invalid exercise of delegated legislative authority if any one of the following applies:
>
> * * *
>
> (b) The agency has exceeded its grant of rulemaking authority, citation to which is required by s. 120.54(3)(a)1.;
>
> (c) The rule enlarges, modifies, or contravenes the specific provisions of law implemented, citation to which is required by s. 120.54(3)(a)1.;
>
> * * *
>
> A grant of rulemaking authority is necessary but not sufficient to allow an agency to adopt a rule; a specific law to be implemented is also required. An agency may adopt only rules that implement or interpret the specific powers and duties granted by the enabling statute. No agency shall have authority to adopt a rule only because it is reasonably related to the purpose of the enabling legislation and is not arbitrary and capricious or is within the agency's class of powers and duties, nor shall an agency have the authority to implement statutory provisions setting forth general legislative intent or policy. Statutory language granting rulemaking authority or generally describing the powers and functions of an agency shall be construed to extend no further than implementing or interpreting the specific powers and duties conferred by the enabling statute.

53. The flush-left paragraph of section 120.52(8) was intended to restrict and narrow the scope of agency rulemaking. *See Bd. of Trs. of the Int. Imp. Tr. Fund v. Day Cruise Ass'n., Inc.*, 794 So. 2d 696 (Fla. 1st DCA 2001); *Sw. Fla. Water Mgmt. Dist. v. Save the Manatee Club, Inc.*, 773 So. 2d 594 (Fla. 1st DCA 2000). As established in *Day Cruise*:

> It is now clear, agencies have rulemaking authority only where the Legislature has enacted a specific statute, and authorized the agency to implement, and then only if the (proposed) rule implements or interprets specific powers or duties, as opposed to improvising in an area that can be said to fall only generally within some class or powers or duties the Legislature has conferred on the agency.

794 So. 2d at 700. Nonetheless, "[i]t follows that the authority for an administrative rule is not a matter of degree. The question is whether the statute contains a specific grant of legislative authority for the rule, not whether the grant of authority is specific *enough*." *Save the Manatee Club, Inc.*, 773 So. 2d at 600.

Extrinsic Evidence of Legislative Intent

54. Petitioner has argued that various rules of statutory interpretation establish a duty on DEP to engraft a higher degree of protection for Florida Springs onto the relatively simple grant of rulemaking authority found in section 373.219(3). Specifically, Petitioner would have the protective standards contained in the FSAPA apply to the Proposed Rules under the doctrine of reading statutes *in pari materia* with other statutes generally dealing with the same subject matter and adopted as part of the same bill. Petitioner also suggests that the statements of Senator Simmons, one of several co-sponsors of SB 552, be accepted as direct evidence of the scope of section 373.219(3).

55. As indicated in the Findings of Fact, section 373.219(3) is, on its face, clear and unambiguous as to the requirements of the rules to be adopted under that section. As set forth in *Save the Manatee Club, Inc.*, 773 So. 2d at 599:

> The parties have suggested various interpretations of this new language based on the legislative history of the statute, but we conclude that it would be improper to construe the statute beyond its terms. A court may resort to extrinsic aids in determining

> legislative intent only if the language used in a statute is ambiguous. *See Holly v. Auld*, 450 So. 2d 217 (Fla.1984); *Rhodes v. State*, 704 So.2d 1080 (Fla. 1st DCA 1997). The limitation in section 120.52(8) to rules that implement or interpret specific powers and duties granted by the enabling statute is clear and unambiguous. Consequently, we have no reason to add our own view of the legislative intent.

56. Even as *Holly v. Auld* has been abrogated in favor of a more flexible test that "requires interpreters to make a threshold determination of whether a term has a 'plain' or 'clear' meaning in isolation, without considering the statutory context and without the aid of whatever canons might shed light on the interpretive issues in dispute," (*Conage v. United States*, 346 So. 3d 594, 598 (Fla. 2022)), under the facts of this case, deviating from the plain and unambiguous text to section 373.219(3) is not warranted.

57. The standards that Petitioner would have apply are generally those derived from the FSAPA, which was created as an entirely separate Act, in an entirely new and separate part (part VIII) of chapter 373, and with its own specific grant of rulemaking authority (section 373.813). Unlike the FSAPA, which recognizes that OFSs are to be afforded a heightened degree of protection, and includes a number of detailed measures for achieving that protection, section 373.219(3) requires only that the CUP rules applied by the WMDs be uniform and, borrowing from language from section 373.219(1) that is already applicable to CUPs, not be harmful to water resources. Thus, enhanced standards are authorized under section 373.813, but not under section 373.219(3).

58. Further, statements of a member of a legislative body as to the purpose and intent of a legislative act is of little weight when confronted with an unambiguous state. *See State v. Patterson*, 694 So. 2d 55, n.3 (Fla. 5th DCA 1997)("the testimony of individual members of the legislature as to what they intended to accomplish is of doubtful worth in determining legislative intent and may not even be admissible."); *Bush v. Whitney Bank*, 219 So. 3d

257, 259 (Fla. 5th DCA 2017) (Berger, J. concurring specially) ("legislative history is useless as a tool for deriving legislative intent, even in the face of an ambiguous statute. Indeed, 'it is utterly impossible to discern what the Members of [the Legislature] intended except to the extent that intent is manifested in the only remnant of 'history' that bears the unanimous endorsement of the majority in each House: the text of the enrolled bill that became law.'" (citation omitted).

59. Having reviewed the entirety of the Senate committee meeting provided as Petitioner's Exhibit 39, it is clear that Senator Simmons had a sincere interest in the springs bill. It would also appear, from his discussion of the Legislative effort to pass a springs bill, and his discussion of the effect of MFLs and BMAPs, enforcement provisions, and time deadlines in the bill, that his discussion incorporated elements of the FSAPA. In any event, it is not within the power of the undersigned to accept Senator Simmons' statements as to his view of the scope of the bill as being that of the other members of the Committee, or of the Senate and the House of Representatives. Here, the language of the relevant statute, section 373.219(3), is as clear as it is limited in its scope, and will be applied as written.

Issues of Law for Disposition

60. The following are the issues of law for disposition as established in the Addendum to Joint Pre-hearing Stipulation.

a. Whether DEP has exceeded its grant of rulemaking authority.

61. Section 373.219(3) provides a direct and explicit grant of rulemaking authority to DEP to adopt rules encompassing the subject matter of the Proposed Rules. That section, standing alone, is sufficient to establish that the Proposed Rules implement or interpret the specific powers and duties granted to DEP, that DEP has not exceeded its legislative grant of

rulemaking authority. *See Save the Manatee Club, Inc.*, 773 So. 2d at 600. Thus, DEP fulfilled its duty to adopt rules implementing and interpreting the specific powers and duties granted by the enabling statute. Under the narrow test in section 120.52(8)(b), the Proposed Rules are not an invalid exercise of delegated legislative authority.

b. Whether the Proposed Rules enlarge, modify, or contravene the specific provisions of law implemented.

62. The Proposed Rules meet the facial requirements established by the legislature in section 373.219(3). They establish standards for CUPs to prevent groundwater withdrawals that are harmful to the water resources; define the term "harmful to the water resources"; establish minimum standards consistent with the overall water policy of the state; and do not prohibit WMDs from adopting a definition of "harmful to the water resources" that is more protective of the water resources. Thus, the Proposed Rules do not enlarge the statute implemented, do not modify the statute implemented, and do not contravene the statute implemented. Petitioner argues that the Proposed Rules do not go far enough, and that they may be applied so as to allow harm to OFSs. However, whether the rules as applied may harm OFSs is a matter for consideration on a case-by-case basis as CUPs undergo review and, potentially, challenge. Under the narrow test in section 120.52(8)(c), the Proposed Rules are not an invalid exercise of delegated legislative authority.

CONCLUSION

Based on the Findings of Fact and Conclusions of Law set forth herein, it is determined that the Department of Environmental Protection's Proposed Rules 62-41.400, 62-41.401, and 62-41.402 are not invalid exercises of delegated legislative authority. Therefore, the First Amended Petition to Determine the Invalidity of Proposed Rules is dismissed.

DONE AND ORDERED this 5th day of May, 2025, in Tallahassee, Leon County, Florida.

E. GARY EARLY
Administrative Law Judge
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NOTICE OF RIGHT TO JUDICIAL REVIEW

A party who is adversely affected by this Final Order is entitled to judicial review pursuant to section 120.68, Florida Statutes. Review proceedings are governed by the Florida Rules of Appellate Procedure. Such proceedings are commenced by filing the original notice of administrative appeal with the agency clerk of the Division of Administrative Hearings within 30 days of rendition of the order to be reviewed, and a copy of the notice, accompanied by any filing fees prescribed by law, with the clerk of the District Court of Appeal in the appellate district where the agency maintains its headquarters or where a party resides or as otherwise provided by law.