STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

PAUL STILL,
Petitioner,

vs.

SUWANNEE RIVER WATER MANAGEMENT DISTRICT,
Respondent,

and

NORTH FLORIDA UTILITY COORDINATING GROUPS, CLAY COUNTY UTILITY AUTHORITY, AND JEA,
Intervenors.
_____/

Case No. 14-1420RU

PAUL STILL,
Petitioner,

vs.

SUWANNEE RIVER WATER MANAGEMENT DISTRICT and DEPARTMENT OF ENVIRONMENTAL PROTECTION,
Respondents,

and

NORTH FLORIDA UTILITY COORDINATING GROUPS, CLAY COUNTY UTILITY AUTHORITY, AND JEA,
Intervenors.
_____/

Case No. 14-1421RP

PAUL STILL,
Petitioner,

vs.

DEPARTMENT OF ENVIRONMENTAL PROTECTION,
Respondent,

and

NORTH FLORIDA UTILITY COORDINATING GROUPS, CLAY COUNTY UTILITY AUTHORITY, AND JEA,
Intervenors.
_____/

Case No. 14-1443RP

FLORIDA WILDLIFE FEDERATION, INC.,
Petitioner,

vs.

DEPARTMENT OF ENVIRONMENTAL PROTECTION,
Respondent.
_____/

Case No. 14-1644RP

FLORIDA WILDLIFE FEDERATION'S UNOPPOSED MOTION FOR LEAVE TO AMEND THE PETITION AND ADD A PARTY

Pursuant to Rule 28-106.202, F.A.C., and Rules 1.210(a) and 1.250(c), Fla. R. Civ. Pro., Petitioner Florida Wildlife Federation ("the Federation) respectfully submits this motion for an Order allowing the Federation to file an amended petition to invalidate the Florida Department of Environmental Protection's Proposed Rules 62-42.100 through 62-42.300 and incorporated documents, to add Ichetucknee Alliance, Inc. as a Petitioner. As grounds for the motion, the Federation submits the following:

1) The Federation seeks leave of this tribunal to amend its petition, as attached in Exhibit A, specifically adding Ichetucknee Alliance, Inc., as a co-petitioner.

2) Ichetucknee Alliance, Inc. ("the Alliance") is a Florida non-profit corporation that works to ensure the restoration, preservation, and protection for future generations of the ecosystems along the full 5.5 mile length of the Ichetucknee River, including all its associated springs.

3) The Alliance now wishes to join in this action and the amended petition is timely filed within 20 days after DEP issued its Notice of Change and Revised Statement of Estimated Regulatory Costs on April 8, 2014. The Alliance is represented by counsel for the Federation and its addition would not result in any additional delays.

4) Leave to amend should be freely granted so that cases may be resolved upon their merits. *Adams v. Knabb Turpentine Co.*, 435 So.2d 944, 946 (Fla. 1st DCA 1983). No party will be prejudiced by this amendment because no responsive pleadings have been filed, no additional claims are being added, and no delay will occur.

5) Counsel for the Federation has consulted with all parties to the consolidated case. The Department of Environmental Protection, Suwanee River Water Management District and Petitioner Still do not object to this motion. The North Florida Utility Coordinating Counsel, Clay County Utilities Association, and JEA take no position on the amendment.

For these reasons, Petitioner FLORIDA WILDLIFE FEDERATION, INC. respectfully requests that the Administrative Law Judge enter an Order allowing it to file the Amended Petition attached hereto as Exhibit A.

Dated April 25, 2014

/s/ Alisa A. Coe
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CERTIFICATE OF SERVICE

I CERTIFY that a true copy of the foregoing was sent via electronic mail only to Jeffrey Brown, Department of Environmental Protection, 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, FL 32399-3000, at jeffrey.brown@dep.state.fl.us and Doug.Beason@dep.state.fl.us; Paul Still, 14167 Southwest 101st Avenue, Starke, FL 32091, at stillpe@aol.com ; Frederick Reeves, Esq., 5709 Tidalwave Dr., New Port Richey, FL 34562, at freeves@tbaylaw.com and meghancox@tbaylaw.com ; George Reeves, Esq., Davis, Schnitker, Reeves and Browning, P.A., PO Box 652, Madison, FL 32341, at tomreeves@earthlink.net ; and Nicolas Porter, Esq. and Edward de la Parte, Jr., Esq., 101 East Kennedy Boulevard, Suite 2000, Tampa, FL 33602, at nporter@dgfirm.com , edelaparte@dgfirm.com , serviceclerk@dgfirm.com and lfoy@dgfirm.com , on this 25rd day of April, 2014.

/s/ Alisa A. Coe
Attorney

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

FLORIDA WILDLIFE FEDERATION, INC.,
and ICHETUCKNEE ALLIANCE, INC.

Petitioners,

v. CASE NO. 14- 1644

FLORIDA DEPARTMENT OF
ENVIRONMENTAL PROTECTION,

Respondent.
_____/

[PROPOSED] AMENDED PETITION TO INVALIDATE PROPOSED RULES OF THE FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION

Pursuant to section 120.56, Florida Statutes, the Florida Wildlife Federation, Inc. ("Federation") and Ichetucknee Alliance, Inc. ("Alliance") respectfully petition to invalidate certain proposed rules of the Florida Department of Environmental Protection ("DEP") establishing minimum flows and levels for the Lower Santa Fe and Ichetucknee Rivers and associated priority springs, namely, proposed rules 62-42.100 through 62-42.300 and documents incorporated by reference therein. (Attachment A).

I. INTRODUCTION

This case concerns a proposed administrative rule that would establish minimum flows ("MFLs") for two spring fed streams in North Central Florida, the Ichetucknee and Lower Santa Fe Rivers, and for springs that discharge into these streams. The term "minimum flow" is defined by statute:

> The minimum flow for a given watercourse shall be the limit at which further withdrawals would be significantly harmful to the water resources or ecology of the area.

§ 373.042(a), Fla. Stat.

EXHIBIT A

The purpose of an MFL is to protect nonconsumptive uses of water, *i.e.*, water necessary for navigation, recreation, and fish and wildlife habitat, from significant harm caused by excessive consumptive uses of the water.

The purpose and intent of section 373.042, Florida Statutes, was to draw a line ("the limit") beyond which further withdrawals would be prohibited. By analogy, all commercial ships are clearly marked with a permanent "Plimsoll Line," which marks the line on the ship hull where the ship has reached its maximum safe load. The line prevents ships from being overloaded because the harbor master can simply look at the ship to see if the line is submerged in order to decide whether to allow the ship to leave port. Minimum flows and levels serve the same function: when the minimums are reached, no further water withdrawals are permitted. These proposed rules effectively repeal the statute's "clear limit" requirement by requiring individual showings of potential impact before further withdrawals are prohibited.

Because the Suwannee River Water Management District ("SRWMD") determined that both the Lower Santa Fe and the Ichetucknee Rivers were below their minimum flow (and therefore required "recovery"), the proposed rule is required to include "a recovery strategy" which, when implemented, "will achieve recovery to the established minimum flow or level as soon as practicable." § 373.0421(2)(a), Fla. Stat.; Ch. 62-40.473, F.A.C. Proposed Rule 62-42.300 incorporates by reference only a small portion of a comprehensive "recovery strategy" for the two rivers that was "accepted" by the Suwannee River Water Management District on March 11, 2014. The section of the "recovery strategy" that is incorporated consists of additional consumptive use permit review criteria and additional individual permit conditions.

The "recovery strategy" allows existing uses – which have resulted in the violations of the minimum flow levels – to continue unabated. Lowering consumptive use levels during the

term of the existing permit is specifically prohibited. The "recovery strategy" also authorizes issuance of new permits as well as renewals and modifications of permits with increased allocations. The new permit conditions consist of: 1) a requirement that permits issued for a duration of greater than five years be subject to modification during the term of the permit, and; 2) a requirement that agricultural CUP permittees agree to allow access to their property once every five years to conduct an irrigation assessment. The "recovery strategy" exempts permittees from being responsible for impacts to the streams and springs due to water use in Georgia and exempts permittees from being responsible for more than their proportionate share of impacts to the MFL water bodies.

II. IDENTIFICATION OF THE PARTIES

1. Florida Wildlife Federation is a Florida not-for-profit corporation with its principal place of business at 2545 Blairstone Pines Drive, Tallahassee, Florida 32314. It is a membership-based organization with approximately 14,000 members throughout Florida. The organization's mission includes the preservation, management, and improvement of Florida's water resources and its fish and wildlife habitat. The Federation has a long history of representing its members in administrative, state, and federal litigation brought to preserve and protect Florida's rivers, lakes, estuaries, and coastal waters and the habitat they create.

2. Ichetucknee Alliance, Inc. is a Florida not-for-profit corporation with its principal place of business at 203 NE 1st Street, Gainesville, FL 32601. It is a membership-based organization with approximately 40 members throughout Florida. The Alliance's mission is to ensure the restoration, preservation, and protection for future generations of the ecosystems along the full 5.5 mile length of the Ichetucknee River, including all its associated springs.

3. Respondent Florida Department of Environmental Protection, adopted the proposed rules in question and its offices are located at 2600 Blair Stone Road, MS #5505, Tallahassee, Florida, 32399-2400

III. DATE OF PUBLICATION OF PROPOSED ACTION

4. The notice of intent to issue the proposed rules was published by FDEP on March 7, 2014. A final public hearing on the rule was noticed on March 20, 2014 and was held on April 3, 2014.[1] A Notice of Change was published on April 8, 2014, which announced a substantive amendment to the Recovery Strategy. Additionally, a revised Statement of Estimated Regulatory Costs was prepared on April 8, 2014. The original petition was filed within 10 days after the date of the final public hearing and the amended petition is filed within 20 days after the Notice of Change and Revised Statement of Estimated Regulatory Costs, and thus are timely filed pursuant to section 120.56(2)(a), Florida Statutes.

IV. PETITIONER'S SUBSTANTIAL INTERESTS

5. Chapter 373, Florida Statutes, states:

> (3) It is further declared to be the policy of the Legislature:
>
> (a) To provide for the management of water and related land resources;
>
> (b) To promote the conservation, replenishment, recapture, enhancement, development, and proper utilization of surface and groundwater;
>
> * * * *
>
> (d) To promote the availability of sufficient water for all existing and future reasonable-beneficial uses and natural systems;
>
> * * * *
>
> (g) To preserve natural resources, fish, and wildlife;

[1] http://sharepoint.dep.state.fl.us/PublicNotices/Lists/Calendar/DispForm.aspx?ID=1101

(h) To promote the public policy set forth in s. 403.021;

(i) To promote recreational development, protect public lands, and assist in maintaining the navigability of rivers and harbors; and

(j) Otherwise to promote the health, safety, and general welfare of the people of this state.

§ 373.016, Fla. Stat.

6. Chapter 373.042, Florida Statutes states:

373.042 Minimum flows and levels.—

(1) Within each section, or the water management district as a whole, the department or the governing board shall establish the following:

(a) Minimum flow for all surface watercourses in the area. The minimum flow for a given watercourse shall be the limit at which further withdrawals would be significantly harmful to the water resources or ecology of the area.

7. The subject of the challenged rules is the minimum flow of two rivers and associated springs. The purpose for setting a minimum flow is to protect non-consumptive uses of water such as water for navigation and recreation, for fish and wildlife habitat, and other natural resources. The challenged rules are the means by which DEP has determined the flow below which further withdrawals would cause significant harm to the water resource and the riverine and spring ecology. The consumptive use permitting criteria and conditions are included in the rule purportedly to aid in recovery of the streams, via controls over consumptive use permitting. Therefore, the proposed rules implement Chapter 373 and specifically sections 373.042 and 373.0421, Florida Statutes.

8. Because the Federation's general scope of interest and activity is the protection, preservation, and enhancement of Florida's waters and the habitat and recreational uses those waters support, the subject of the challenged rules is within the Federation's general scope of interest and activity.

9. Because the Alliance's general scope of interest and activity is the restoration, preservation, and protection of the Ichetucknee River and its springs, the subject of the challenged rules is within the Alliance's general scope of interest and activity.

10. A substantial number of the members of the Federation use and enjoy the waters of the Ichetucknee and the Santa Fe Rivers and associated springs for a variety of purposes, including, but not limited to, wading, boating, walking, swimming, snorkeling, diving, tubing, canoeing, wildlife observation, photography, personal and commercial research, and fishing.

11. A substantial number of the members of the Alliance use and enjoy the waters of the Ichetucknee and the Santa Fe Rivers and associated springs for a variety of purposes, including, but not limited to, wading, boating, walking, swimming, snorkeling, diving, tubing, canoeing, wildlife observation, photography, personal and commercial research, and fishing.

12. The proposed rules set the flow at which further withdrawals will cause significant harm, acknowledge that the rivers are already below this flow, but allow continuing and indeed further consumptive use withdrawals that threaten to continue to adversely impact the water bodies' non-consumptive uses. The proposed rules also fail to include a recovery strategy that incorporates conservation and efficiency measures which would aid recovery of the MFL water bodies. Therefore, the proposed rules will substantially and adversely affect the Federation's and Alliance's members' use and enjoyment of these waters which the statutes implemented are specifically intended to protect.

13. The Federation, the Alliance and their respective members who use and enjoy these water bodies will continue to be substantially affected unless the proposed rules which implement the minimum flow requirement are declared invalid.

IV. DISPUTED ISSUES OF MATERIAL FACT

14. Whether the "recovery strategy" incorporated by reference into the proposed rule will "achieve recovery to the established minimum flow . . . as soon as practicable" as required by section 373.0421(2)(a), Florida Statutes, given that it fails to include concurrent development of additional water supplies and implementation of conservation and efficiency measures.

15. Whether DEP has provided sufficient information to measure compliance with the springs' MFLs contained in Proposed Rule 62-42.300(1)(c).

16. Whether the absence of a specific "period of record" for the flow duration curves used in the proposed rules allows those curves to be established during dry or wet periods and therefore vary very widely based on the period of record chosen.

17. Whether all consumptive use permits require monitoring of pumping and reporting of the data and whether the districts have required monitoring of pumping and data from existing users.

18. Whether a lack of pumping data for existing users prevents a true accounting of water use in the area and a scientifically valid analysis of their impacts.

19. Whether Supplemental Regulatory Measure 6.0.2 provides a standard for the modeling to be used when no guidance is given on which assumptions, procedures or inputs should be used in the model.

20. Whether variations in modeling tools, standards, procedures, assumptions and inputs can produce different results in outcome.

21. Whether the decision of what consumptive uses create impacts to the Santa Fe and Ichetucknee can be influenced by decisional "cut-off" points made prior to modeling.

22. Whether under current district rules, a model simulation resulting in a 0.1 percent or more reduction in streamflow at various river gauging stations due to the proposed withdrawal is an indication that the potential for adverse impacts may exist.

23. Whether a model simulation resulting in a 0.1 percent or more reduction in streamflow at various river gauging stations due to the proposed withdrawal is an adequate indication that the potential for adverse impacts may exist.

24. Whether under the proposed rules a modeled streamflow reduction of 0.05 mgd is an indicator of potential impacts at the MFL gauges, and is validly used to estimate the numbers and types of permits likely to pose a potential adverse impact to the MFL under the proposed rules.

25. Whether a modeled streamflow reduction of 0.05 mgd is an adequate indicator of potential impacts to estimate the numbers and types of permits likely to be determined to pose a potential adverse impact to the MFL under the proposed rules.

26. Whether the decisional cutoffs used by DEP or the water management districts constitute rules that should or must be adopted via rulemaking.

27. Whether the proposed rules adequately account for cumulative impacts.

28. Whether the proposed rules adequately account for consumptive uses that are issued general permits.

29. Whether the proposed rules adequately control general permits to prevent potential adverse impacts from these uses.

30. Whether Supplemental Regulatory Measure 6.0.5 provides standards on the best available information to be used including what type, nature, amount or derivation of information to use.

31. Whether differences in the type, nature, amount or derivation of information to be used can substantially change the outcome reached in evaluating applications for potential impacts.

32. Whether the application evaluations in Supplemental Regulatory Measure 6.0.5 require analysis of individual permit application impacts only.

33. Whether recovery as soon as practicable can be achieved if existing uses that already contribute to significant harm are allowed to continue, and development of additional water supplies to address the problem are not concurrently implemented.

34. Whether the proposed rules provide a standard for determining whether impacts are due to water users in Georgia and the means for determining the proportional share of impacts attributable to any water user.

35. Whether the cone of depression of the North Floridan Aquifer is accounted for in the proposed rules.

V. ULTIMATE FACTS WARRANTING REVERSAL

36. The recovery strategy incorporated by reference into the proposed rule will not "achieve recovery to the established minimum flow….as soon as practicable" as required by section 373.0421(2), Florida Statutes.

37. DEP's proposed rules fail to simultaneously include a recovery strategy that requires the "development of additional water supplies and implementation of conservation and other efficiency measures" as required by sections 373.042(4) and 373.0421(2), Florida Statutes.

38. Proposed Rule 62-42.300(1)(c) fails to contain sufficient information to control the agency's discretion in determining MFLs for priority springs.

39. Supplemental Regulatory Measure 6.0.2 fails to provide a standard for what constitutes the "best available modeling tools" such that the rule could be applied by different people to reach different results.

40. Supplemental Regulatory Measure 6.0.5 fails to provide an explanation of what constitutes "best available information," such that the rule could be applied by different people to reach different results.

41. Supplemental Regulatory Measure 6.0.5 fails to provide standards such that different people could reach different results in the evaluation of potential impacts to MFL water bodies from new permits, renewals and modifications with increased allocations, and renewals with no increased allocations.

42. The proposed rules fail to provide a standard by which to evaluate Georgia uses or the proportional share of recovery attributable to a water user.

43. Supplemental Regulatory Measure 6.0.5 requires a showing of additional harm beyond the finding of cumulative harm represented by a violation of the MFL limit before further withdrawals are prohibited.

44. Measurement of harm at gauges measuring stream flow is a scientifically invalid way to capture significant harm that is being caused by ground water depletion in the area influencing the MFL water bodies.

45. Carried to its logical conclusion, Supplemental Regulatory Measure 6.0.5(f) would allow consumptive uses to dramatically lower the Floridan aquifer and diminish the flow in the MFL water bodies to a trickle via the mechanism of assigning a proportional share of the blame on Georgia users and excusing water users from being responsible for more than only a proportional share of recovery requirements.

VI. THE PROPOSED RULES ALLEGED TO BE INVALID AND GROUNDS FOR THEIR INVALIDITY

46. Proposed Rules 62-42.100(1)&(2) enlarge, modify, or contravene sections 373.042(4) and 373.0421(2), Florida Statutes. These proposed rules purport that DEP has the authority to adopt only the regulatory portion of an MFL recovery strategy whereas the laws implemented that are actually relevant to the proposed rules, authorize only the adoption of a recovery strategy that includes the "development of additional water supplies, and implementation of conservation and other efficiency measures."

47. Proposed Rule 62-42.300(1)(c) is vague. The proposed rule fails to specify a particular flow duration curve or a specific "period of record" upon which the flow duration curves are based. Flow duration curves and frequencies vary widely depending on whether the period of record chosen is during a dry period or wet period.

48. Proposed Rule 62-42.300(1)(d) enlarges, modifies, or contravenes sections 373.042(4) and 373.0421(2), Florida Statutes. DEP is incorporating only the "regulatory" portion of the "Recovery Strategy" accepted by the SRWMD, but the laws implemented, sections 373.042(4) and 373.0421(2), Florida Statutes, authorize only the simultaneous adoption of a recovery strategy that includes the "development of additional water supplies, and implementation of conservation and other efficiency measures concurrent with, to the extent practicable, and to offset, reductions in permitted withdrawals consistent with the provisions of this chapter."

49. Supplemental Regulatory Measure 6.0.2 provides that "each District shall apply the best available modeling tools to evaluate permit applications and their potential impact to the MFLS in the Lower Santa Fe River basin." This measure is vague and gives the water management districts unbridled discretion to decide how they will evaluate permit applications

and their potential impacts to the MFLs because the word "apply" without any additional information on the modeling tools that will be used, or standards, procedures, or assumptions that will be applied in conducting that modeling vests unbridled discretion in the agency.

50. Supplemental Regulatory Measure 6.0.5 (Evaluation of Potential Impacts) is vague. The measure requires applications to be evaluated based on "best available information" without specifying the type, nature, amount, or derivation of the information that will be used.

51. Supplemental Regulatory Measures 6.0.5(b), (c) and (d) (Additional Review Criteria for b) New Permits, c) Renewals and Modifications with Increased Allocations, and d) Renewals With No Increase in Allocations) modify, contravene, or enlarge section 373.042, Florida Statutes. The legislature mandated that a minimum flow "shall be the limit" at which further withdrawals would be significantly harmful to the resource. However, instead of establishing a limit on all further withdrawals, and after acknowledging that the MFL is currently being violated, the proposed rules require an additional showing of harm from each additional withdrawal before the additional withdrawals are prohibited. Nothing in section 373.042, Florida Statutes authorizes DEP to require such an additional showing of harm.

52. Supplemental Regulatory Measures 6.0.5(b), (c) and (d) (Additional Review Criteria for b) New Permits, c) Renewals and Modifications with Increased Allocations, and d) Renewals With No Increase in Allocations) modify, contravene, or enlarge section 373.042, Florida Statutes because they permit additional withdrawals despite acknowledged ongoing harm to the water resources of the "area." The legislature mandated that the minimum flow be a "limit" on further withdrawals because such withdrawals would be significantly harmful to the water resources or ecology of the "area." The SRWMD has acknowledged that the MFL water bodies are groundwater dominated systems, that a severe cone of depression in the Northeastern

portion of the Floridan Aquifer exists due to the cumulative impacts of excessive water withdrawals, and that it is clear that cumulative groundwater withdrawals in both the SRWMD and the SJRWMD are a source of the violation of the MFLs. DEP lacks the statutory authority to permit additional withdrawals from the Floridan Aquifer regardless of whether the District can or cannot discern a measurable impact on surface water flow in the MFL water bodies.

53. Supplemental Regulatory Measures 6.0.5(b),(c), and (d) (Additional Review Criteria for b) New Permits, c) Renewals and Modifications with Increased Allocations, and d) Renewals With No Increase in Allocations) all require an analysis of individual applications to determine whether they do or do not demonstrate "a potential impact to the MFL water bodies." This determination is made based upon the districts' use of the vaguely stated "best available modeling tools to evaluate permit applications and their potential impacts to the MFLs." Without incorporation of the information on the modeling tools that will be used, or standards, procedures, or assumptions that will be applied in conducting that modeling the rule is vague, standardless, and vests unbridled discretion in the agency.

54. Supplemental Regulatory Measure Section 6.0.5(e) (Existing Permitted Uses) which allows existing uses to continue unabated during the term of the permit is arbitrary and capricious when read in *pari materia* with proposed Rule 62-42.300(1)(e) which incorporates by reference only the "regulatory" portion of the Recovery Strategy accepted by the SRWMD. The MFL water bodies are already in need of recovery – an acknowledgement that significant harm resulting from over permitting has already occurred. Under those conditions, section 373.0421(2), Florida Statutes, requires expeditious (and concurrent to the extent practicable) implementation of a recovery strategy that includes development of additional water supplies. This recovery strategy must be simultaneously adopted by DEP by rule along with the MFL

pursuant to section 373.042(4), Florida Statutes. These actions are required because DEP is mandated to develop a recovery plan that will achieve recovery "as soon as practicable." This statutorily mandated goal cannot be achieved if existing uses already contributing to significant harm are allowed to continue *and* development of additional water supplies and conservation measures to address this problem are not concurrently implemented as mandated by statute. As that is the outcome of DEP's rules, the rules are arbitrary and capricious.

55. Supplemental Regulatory Measure 6.0.5(e) (Existing Permitted Uses) which allows existing uses to continue unabated during the term of the permit enlarges, modifies, or contravenes, the laws implemented, sections 373.042 and 372.0421, Florida Statutes, when read in *pari materia* with proposed Rule 62-42.300(1)(e) which incorporates by reference only the "regulatory" portion of the Recovery Strategy accepted by the SRWMD for the reasons stated in the previous paragraph.

56. Supplementary Regulatory Measure 6.0.5(f) which exempts all Florida water users from being held responsible for recovery from impacts to the MFL water bodies from water users in Georgia, modifies, enlarges, or contravenes sections 373.042, and 373.223(1), Florida Statutes. Carried to its logical conclusion, this provision would allow consumptive uses to dramatically lower the Floridan aquifer and diminish the flow in the MFL water bodies to a trickle via the mechanism of assigning a proportional share of the blame on Georgia users, an outcome prohibited by Article 2, Section 7 of the Florida Constitution. Furthermore, section 373.042, Florida Statutes, which prohibits further withdrawals when a water body is at its MFL limit, codifies the legislature's view that it is in the public interest that streams be maintained at that limit. Section 373.223(1), Florida Statutes, prohibits withdrawals that are not consistent with the public interest. DEP lacks the authority to excuse permit holders from the constraints

imposed by a finding that a water body is below its MFL because Georgia users have contributed to violation of the limit.

57. Supplementary Regulatory Measure 6.0.5(f), which exempts a water user from being responsible for more than its proportionate share of impacts to an MFL water body that fails to meet the established minimum flow or level, modifies, enlarges, or contravenes section 373.042, Florida Statutes. The legislature mandated that a minimum flow "shall be the limit" at which further withdrawals would be significantly harmful to the resource. Nothing in the statute requires a showing of "proportionality" before a recovery strategy can be implemented.

VII. STATEMENT OF RELIEF SOUGHT

Petitioners respectfully request that the administrative law judge enter a final order determining that the proposed rules as set forth above are an invalid exercise of delegated legislative authority.

Dated April 25, 2014

/s/ Alisa A. Coe
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COUNSEL FOR PETITIONERS

CERTIFICATE OF SERVICE

I CERTIFY that a true copy of the foregoing was sent via electronic mail only to Jeffrey Brown, Department of Environmental Protection, 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, FL 32399-3000, at jeffrey.brown@dep.state.fl.us and Doug.Beason@dep.state.fl.us; Paul Still, 14167 Southwest 101st Avenue, Starke, FL 32091, at stillpe@aol.com ; Frederick Reeves, Esq., 5709 Tidalwave Dr., New Port Richey, FL 34562, at freeves@tbaylaw.com and meghancox@tbaylaw.com ; George Reeves, Esq., Davis, Schnitker, Reeves and Browning, P.A., PO Box 652, Madison, FL 32341, at tomreeves@earthlink.net ; and Nicolas Porter, Esq. and Edward de la Parte, Jr., Esq., 101 East Kennedy Boulevard, Suite 2000, Tampa, FL 33602, at nporter@dgfirm.com , edelaparte@dgfirm.com , serviceclerk@dgfirm.com and lfoy@dgfirm.com , on this 25rd day of April, 2014.

/s/ Alisa A. Coe
Attorney