



**City of North Port**  
City Manager's Office

**Intraoffice Memorandum**

**To:** City Mgr. Jerome Fletcher  
**From:** Todd Miles, Legislative Analyst  
**Date:** June 5, 2023  
**Subject:** WMS (Revised)

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Spring Guidance  
Document 2017.pdf

### Outstanding Florida Springs Designation Legislation

This memo provides additional detailed context for the request in March to our legislative sponsors to pause consideration of SB1134 and HB 1505; such request being based on concerns as to the effect that designation of WMS as an "Outstanding Florida Spring" or "OFS" would have on the City's ongoing procurement of P3 development for the WMS site in the event that such bills were to be enacted in the 2023 Legislative Session.

According to the memorandum provided by Planning dated March 9, 2023, WMS would be subject to assessment by DEP, pursuant to which an impairment determination would be made and, if appropriate, a nutrient total maximum daily load (TMDL) would be adopted. DEP, in conjunction with SWFWMD, would then initiate development and adoption of a Basin Action Management Plan (BMAP). The implications for the City from BMAP adoption are set forth in more detail in such Planning memo.

I have contacted and confirmed with Kim Shugar at Florida DEP, Director of the Division of Environmental Assessment and Restoration, that "*WMS is currently not impaired, meaning that it is attaining water quality standards. Because it isn't impaired, it does not need a TMDL and BMAP developed.*" It would seem prudent to evaluate P3 development plans in order to assess whether impairment of WMS would result, thereby triggering the need to develop a TDML and BMAP.

In the event that WMS should require a TMDL and BMAP in the future, it should be noted that DEP adopted its initial BMAPs for currently designated OFSs on June 29, 2018 in an effort to comply with applicable provisions of the Florida Springs and Aquifer Protection Act enacted in 2016 (Springs Act). Litigation was commenced challenging DEP's interpretations and implementation of certain provisions in the Springs Act in its approval of

four final BMAPs covering geographic areas which included 15 of such OFSs. This litigation culminated in a February 15, 2023 decision by the First District Court of Appeal ruling that the four challenged BMAPs did not properly include detailed allocations of nitrogen pollution load reductions and requiring that DEP revise such BMAPs so as to identify how much nitrogen pollution will have to be reduced among various non-point source categories, including farm and fertilizer, animal waste and septic systems.

DEP has not appealed this court decision and is currently evaluating its options. Consequently, five years after adoption of the initial BMAPs for 15 currently designated OFSs, such BMAPs and their related frameworks for water quality restoration containing local and state commitments to reduce pollutant loading are still not finalized.

During the 2023 Legislative Session, the decision to pause consideration of the WMS bills was based on concerns regarding implications of potential adoption of a TDML and BMAP for the proposed P3 plan for WMS development. In view of the court decision requiring DEP to revise its adopted BMAPs for other designated OFSs, it has become apparent that the DEP process for such adoption can also be subject to multiple year delays arising from legal challenges.

#### Loss of Potential Funding

Assertions that have been made about the loss of state funding which would have been available to the City had WMS been designated as an OFS, specifically relying on a recital in Resolution No. 2022-R-75 approved by the Commission on December 13, 2022 which stated that “more than \$11,500,000 would have been available to benefit Warm Mineral Springs and Little Salt Springs if allocated for the local springs.”

Based on information provided by Vivianna Bendixson, Manager of the Surface Water Improvement & Management Program at SWFWMD, her staff reviews applications for the DEP Springs Grants funding program based on funding criteria approved by the DEP Springs Coast Steering Committee (see attached). Projects that benefit an OFS, are in a BMAP and are in a Primary Focus Area are given the highest consideration and projects that do not meet all these criteria receive a lower ranking for the spring information category. WMS does not meet such funding criteria because, even after designation as an OFS, according to DEP WMS is currently not impaired and therefore does not need a BMAP developed. *Accordingly, it is not clear that WMS designation as an OFS would receive any allocation of DEP Springs Grants funding.*