STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

SIERRA CLUB,		
Petitioner,		
v.	**OGC CASE NO.**	**17-1165**
	DOAH CASE NO.	**19-0644**
DEPARTMENT OF ENVIRONMENTAL PROTECTION,		
Respondent.		
THOMAS GREENHALGH,		
Petitioner,		
v.	**OGC CASE NO.**	**17-1165**
	DOAH CASE NO.	**19-0645**
DEPARTMENT OF ENVIRONMENTAL PROTECTION,		
Respondent.		
SAVE THE MANATEE CLUB, INC.,		
Petitioner,		
v.	**OGC CASE NO.**	**17-1167**
	DOAH CASE NO.	**19-0646**
DEPARTMENT OF ENVIRONMENTAL PROTECTION,		
Respondent.		

SILVER SPRINGS ALLIANCE, INC., AND RAINBOW RIVER CONSERVATION, INC.,		
Petitioners,		
v.	**OGC CASE NO.**	**18-1060**
	DOAH CASE NO.	**19-0647**
DEPARTMENT OF ENVIRONMENTAL PROTECTION,		
Respondent.		
OUR SANTA FE RIVER, INC., ICHETUCKNEE ALLIANCE, INC., GINNIE SPRINGS OUTDOORS, LLC, and JIM TATUM		
Petitioners,		
v.	**OGC CASE NO.**	**18-1061**
	DOAH CASE NO.	**19-0648**
DEPARTMENT OF ENVIRONMENTAL PROTECTION,		
Respondent.		
PAUL STILL,		
Petitioner,		
v.	**OGC CASE NO.**	**18-1061**
	DOAH CASE NO.	**19-0649**
DEPARTMENT OF ENVIRONMENTAL PROTECTION,		
Respondent.		
FRIENDS OF WEKIVA RIVER, INC.,		
Petitioner,		
v.	**OGC CASE NO.**	**18-1065**
	DOAH CASE NO.	**19-0650**
DEPARTMENT OF ENVIRONMENTAL PROTECTION,		
Respondent.		

CONSOLIDATED FINAL ORDER

An Administrative Law Judge (ALJ) with the Division of Administrative Hearings (DOAH) on February 17, 2021, submitted a Recommended Order (RO) to the Department of Environmental Protection (DEP or Department) in the above-captioned administrative proceeding. A copy of the RO is attached hereto as Exhibit A. The Petitioners, Sierra Club, Inc. (Sierra Club), Save the Manatee Club, Inc. (SMC), Silver Springs Alliance, Inc. (SSA), Rainbow River Conservation, Inc. (RRC), Our Santa Fe River, Inc. (OSFR), Ichetucknee Alliance, Inc. (the Alliance), Jim Tatum (Tatum), and Friends of Wekiva River, Inc. (FOWR) (collectively the Petitioners) timely filed exceptions to the RO on March 4, 2021. Petitioner Thomas Greenhalgh (Greenhalgh) timely filed separate exceptions to the RO on March 2, 2021. Petitioner Paul Still (Still) did not file any exceptions to the RO. DEP timely filed exceptions to the RO on March 4, 2021.

This matter is now before the Secretary of the Department for final agency action.

BACKGROUND

On June 29, 2018, the Department issued five separate orders adopting five basin management action plans (BMAPs) for numerous springs throughout Florida. The Petitioners, Ginnie Springs Outdoors, LLC, Greenhalgh, and Still filed amended petitions for an administrative hearing before the Division of Administrative Hearings (DOAH) that were referred to DOAH by DEP on or about February 5, 2019. The Petitioners, Greenhalgh, and Still alleged that the five BMAPs did not comply with the provisions of section 403.067, Florida Statutes, and the Florida Springs and Aquifer Protection Act, codified as sections 373.801 through 373.813, Florida Statutes (the Act).

Sierra Club, Inc., and Thomas Greenhalgh challenged the Final Order Establishing the Suwannee River BMAP, and were assigned Case Nos. 19-0644 and 19-0645, respectively. Save the Manatee Club, Inc. challenged the Final Order Establishing the Volusia Blue Spring BMAP and was assigned Case No. 19-0646. Silver Springs Alliance, Inc., and Rainbow River Conservation, Inc., challenged the Final Order Establishing the Silver Springs and Upper Silver River and Rainbow Spring Group and Rainbow River BMAP and were assigned Case No. 19-0647. Our Santa Fe River, Inc., Ichetucknee Alliance, Inc., Ginnie Springs Outdoors, LLC, and Jim Tatum challenged the Final Order Establishing the Santa Fe River BMAP and were assigned Case No. 19-0648. Paul Still also challenged the Final Order Establishing the Santa Fe River BMAP and was assigned Case No. 19-0649. Friends of Wekiva River, Inc., challenged the Final Order Establishing the Wekiwa Spring and Rock Springs BMAP and was assigned Case No. 19-0650. The cases were consolidated on February 12 and 14, 2019. Ginnie Springs Outdoors, LLC, filed a Notice of Withdrawal of Petition on August 22, 2019, and was dismissed as a petitioner by order of the Administrative Law Judge (ALJ) entered the same day.

DOAH held the final hearing for the consolidated cases on November 12 through 15, and November 18 through 20, 2019, in Tallahassee, Florida. Joint Petitioners presented the fact testimony of Merrillee Jipson, Michael Roth, Burt Eno, Dennis Jones, Faith Jones, John Jopling, Chris Spontak, Mike Cliburn, Chris Mericle, Patrick Rose, Jim Tatum, Thomas Greenhalgh, and John Moran. Joint Petitioners also presented the expert testimony of Anthony R. Gaudio (Gaudio), E. Allen Stewart (Stewart), P.E., Robert L. Knight (Knight), Ph.D., and Thomas Greenhalgh (Greenhalgh), P.G.

DEP presented the fact and expert testimony of Thomas Frick (Frick), Gregory DeAngelo (DeAngelo), Kevin R. Coyne (Coyne), Moira R. Homann (Homann), Celeste Lyon (Lyon), Terry

Hansen (Hansen), P.G., and Mary Paulic (Paulic). DEP also presented the expert testimony of Richard Hicks (Hicks), P.G.

A twelve-volume transcript of the final hearing was filed with DOAH on December 13, 2019. The ALJ authorized the parties to submit proposed recommended orders of up to 80 pages. The parties timely filed proposed recommended orders, which the ALJ carefully considered in the preparation of her RO.

SUMMARY OF THE RECOMMENDED ORDER

In the RO, the ALJ recommended that the Department issue a final order approving the five separate orders issued on June 29, 2018, adopting the five BMAPs for the Suwannee River, the Volusia Blue Spring, the Silver Springs-Rainbow Spring Group, the Santa Fe River, and the Wekiwa Spring-Rock Springs. In doing so, the ALJ concluded that "the preponderance of the evidence established that each BMAP complied with the applicable statutory framework and legislative intent of the Act, and of section 403.067(7) regarding the development of BMAPs." RO ¶ 154.

STANDARDS OF REVIEW OF DOAH RECOMMENDED ORDERS

Section 120.57(1)(l), Florida Statutes, prescribes that an agency reviewing a recommended order may not reject or modify the findings of fact of the ALJ "unless the agency first determines from a review of the entire record, and states with particularity in the order, that the findings of fact were not based on competent substantial evidence." § 120.57(1)(l), Fla. Stat. (2020); *Charlotte Cty. v. IMC Phosphates Co.*, 18 So. 3d 1089 (Fla. 2d DCA 2009); *Wills v. Fla. Elections Comm'n*, 955 So. 2d 61, 62-63 (Fla. 1st DCA 2007). The term "competent substantial evidence" does not relate to the quality, character, convincing power, probative value or weight of the evidence. Rather, "competent substantial evidence" refers to the existence of some

evidence as to each essential element and as to its admissibility under legal rules of evidence. *See e.g., Scholastic Book Fairs, Inc. v. Unemployment Appeals Comm'n*, 671 So. 2d 287, 289 n.3 (Fla. 5th DCA 1996); *Nunez v. Nunez*, 29 So. 3d 1191, 1192 (Fla. 5th DCA 2010).

The ALJ can also "draw permissible inferences from the evidence." *Heifetz v. Dep't of Bus. Regulation*, 475 So. 2d 1277, 1281 (Fla. 1st DCA 1985). *See also Walker v. Bd. of Prof'l Eng'rs*, 946 So. 2d 604, 605 (Fla. 1st DCA 2006) ("It is the hearing officer's function to consider all the evidence presented, resolve conflicts, judge credibility of witnesses, draw permissible inferences from the evidence, and reach ultimate findings of fact based on competent, substantial evidence."). Moreover, drawing reasonable inferences from the evidence, is an evidentiary-related matter wholly within the province of the ALJ, as the "fact-finder" in this administrative proceeding. *See e.g., Tedder*, 842 So. 2d at 1025.

A reviewing agency may not reweigh the evidence presented at a DOAH final hearing, attempt to resolve conflicts therein, or judge the credibility of witnesses. *See, e.g., Rogers v. Dep't of Health*, 920 So. 2d 27, 30 (Fla. 1st DCA 2005); *Belleau v. Dep't of Env't. Prot.*, 695 So. 2d 1305, 1307 (Fla. 1st DCA 1997); *Dunham v. Highlands Cty. School Bd.*, 652 So. 2d 894 (Fla. 2d DCA 1995). If there is competent substantial evidence to support an ALJ's findings of fact, it is irrelevant there also may be competent substantial evidence supporting a contrary finding. *See, e.g., Arand Constr. Co. v. Dyer*, 592 So. 2d 276, 280 (Fla. 1st DCA 1991); *Conshor, Inc. v. Roberts*, 498 So. 2d 622 (Fla. 1st DCA 1986).

The ALJ's decision to accept the testimony of one expert witness over that of another expert is an evidentiary ruling that cannot be altered by a reviewing agency, absent a complete lack of any competent substantial evidence of record supporting this decision. *See, e.g., Peace River/Manasota Reg'l Water Supply Auth. v. IMC Phosphates Co.*, 18 So. 3d 1079, 1082, 1088

(Fla. 2d DCA 2009); *Collier Med. Ctr. v. State, Dep't of HRS*, 462 So. 2d 83, 85 (Fla. 1st DCA 1985); *Fla. Chapter of Sierra Club v. Orlando Utils. Comm'n*, 436 So. 2d 383, 389 (Fla. 5th DCA 1983). In addition, an agency has no authority to make independent or supplemental findings of fact. *See, e.g., North Port, Fla. v. Consol. Minerals*, 645 So. 2d 485, 487 (Fla. 2d DCA 1994*); Fla. Power & Light Co. v. Fla. Siting Bd.*, 693 So. 2d 1025, 1026-027 (Fla. 1st DCA 1997).

Section 120.57(1)(l), Florida Statutes, authorizes an agency to reject or modify an ALJ's conclusions of law and interpretations of administrative rules "over which it has substantive jurisdiction." *See Barfield v. Dep't of Health*, 805 So. 2d 1008, 1012 (Fla. 1st DCA 2001); *L.B. Bryan & Co. v. Sch. Bd. of Broward Cty.,* 746 So. 2d 1194, 1197 (Fla. 1st DCA 1999); *Deep Lagoon Boat Club, Ltd. v. Sheridan*, 784 So. 2d 1140, 1141-142 (Fla. 2d DCA 2001). Considerable deference should be accorded to these agency interpretations of statutes and rules within their regulatory jurisdiction, and such agency interpretations should not be overturned unless "clearly erroneous." *See, e.g., Falk v. Beard*, 614 So. 2d 1086, 1089 (Fla. 1993); *Dep't of Env't. Reg. v. Goldring*, 477 So. 2d 532, 534 (Fla. 1985). Furthermore, agency interpretations of statutes and rules within their regulatory jurisdiction do not have to be the only reasonable interpretations. It is enough if such agency interpretations are "permissible" ones. *See, e.g., Suddath Van Lines, Inc. v. Dep't of Env't. Prot.*, 668 So. 2d 209, 212 (Fla. 1st DCA 1996).

If an ALJ improperly labels a conclusion of law as a finding of fact, the label should be disregarded, and the item treated as though it were actually a conclusion of law. *See, e.g., Battaglia Properties v. Fla. Land and Water Adjudicatory Comm'n*, 629 So. 2d 161, 168 (Fla. 5th DCA 1994). However, the agency should not label what is essentially an ultimate factual determination as a "conclusion of law" to modify or overturn what it may view as an unfavorable

finding of fact. *See, e.g., Stokes v. State, Bd. of Prof'l Eng'rs*, 952 So. 2d 1224, 1225 (Fla. 1st DCA 2007). Furthermore, agency interpretations of statutes and rules within their regulatory jurisdiction do not have to be the only reasonable interpretations. It is enough if such agency interpretations are "permissible" ones. *See, e.g., Suddath Van Lines, Inc. v. Dep't of Env't. Prot.*, 668 So. 2d 209, 212 (Fla. 1st DCA 1996). The Department is charged with enforcing and interpreting chapters 373 and 403, Florida Statutes. As a result, DEP has substantive jurisdiction over interpretation of these statutes and the Department's rules adopted to implement these statutes.

Agencies do not have jurisdiction to modify or reject rulings on the admissibility of evidence. Evidentiary rulings of the ALJ that deal with "factual issues susceptible to ordinary methods of proof that are not infused with [agency] policy considerations," are not matters over which the agency has "substantive jurisdiction." *See Martuccio v. Dep't of Prof'l Reg.*, 622 So. 2d 607, 609 (Fla. 1st DCA 1993); *Heifetz v. Dep't of Bus. Reg.*, 475 So. 2d 1277, 1281-82 (Fla. 1st DCA 1985). Evidentiary rulings are matters within the ALJ's sound "prerogative . . . as the finder of fact" and may not be reversed on agency review. *See Martuccio*, 622 So. 2d at 609.

RULINGS ON EXCEPTIONS

In reviewing a recommended order and any written exceptions, the agency's final order "shall include an explicit ruling on each exception." *See* 120.57(1)(k), Fla. Stat. (2020). The agency, however, need not rule on an exception that "does not clearly identify the disputed portion of the recommended order by page number or paragraph, that does not identify the legal basis for the exception, or that does not include appropriate and specific citations to the record." *Id.*

A party that files no exceptions to certain findings of fact "has thereby expressed its agreement with, or at least waived any objection to, those findings of fact." *Env't. Coal. of Fla., Inc. v. Broward Cty.*, 586 So. 2d 1212, 1213 (Fla. 1st DCA 1991); *see also Colonnade Med. Ctr., Inc. v. State of Fla., Agency for Health Care Admin.*, 847 So. 2d 540, 542 (Fla. 4th DCA 2003). However, an agency head reviewing a recommended order is free to modify or reject any erroneous conclusions of law over which the agency has substantive jurisdiction, even when exceptions are not filed. *See* § 120.57(1)(l), Fla. Stat. (2020); *Barfield*, 805 So. 2d at 1012; *Fla. Public Employee Council, v. Daniels,* 646 So. 2d 813, 816 (Fla. 1st DCA 1994).

RULINGS ON PETITIONERS' EXCEPTIONS

The Department will address the party's exceptions to paragraphs from the Recommended Order in the order presented in each party's exceptions.

Petitioners' Exception to Paragraph 56.

The Petitioners take exception to the use of the word "specific" in the last sentence of paragraph 56 of the RO contending it is a typographical error that renders the paragraph ambiguous. The Petitioners note that it is unclear what the word "specific" in the paragraph modifies. In Paragraph 56 of the RO, the ALJ found:

> 56. The TMDL rules at issue established reasonable and equitable allocations of the TMDL between point versus nonpoint types of sources of pollution. The TMDL rules did not establish an initial allocation of allowable pollutant loads among point and nonpoint sources. There are no direct discharges of wastewater into the OFSs at issue, so there are no allocations established among individual point sources in these TMDL rules. The TMDL rules establish an allocation between point and nonpoint sources specific, but they do not establish an allocation among the categories of nonpoint sources, such as urban turf fertilizer, sports turf fertilizer, agricultural fertilizer, onsite sewage treatment and disposal systems, wastewater treatment facilities, animal wastes, and stormwater facilities.

RO ¶ 56 (emphasis added).

DEP in response to Petitioners' exceptions agrees with the Petitioners' exception that the word "specific" in RO paragraph 56 is a typographical error. Upon review, the Department agrees that the word "specific" does not appear to modify any word or phrase and must be a typographical error. Moreover, the last sentence is made clear and unambiguous when the word "specific" is removed. Consequentially, the Department finds that the word "specific" in the last sentence in paragraph 56 is a typographical error and should be removed from paragraph 56 of the RO.

Based on the foregoing reasons, the Petitioners' exception to paragraph 56 of the RO is granted as set forth above.

Petitioners' Exception to Paragraph 79.

Both the Petitioners' and DEP take exception to a portion of the ALJ's finding in paragraph 79 of the RO, which provides that "abandonment of a [septic] system and connection to central sewer would remove nitrates at a factor of 9 percent." (emphasis added). RO ¶ 79. The Petitioners contend that the figure of "9 percent" is a typographical error or not supported by competent substantial evidence.

DEP contends in its corresponding exception that three of the BMAP documents indicate that the figure is 95%, and requests that the number in the RO be treated as a typographical error and changed from 9% to 95%. DEP requests that the Department change the number from 9% to 95%, because the 9% figure is not supported by competent substantial evidence; however, the 95% figure is supported by competent substantial evidence in 3 of the BMAPs. (Joint Ex. 2, p. 54; Joint Ex. 4, p. 29; Joint Ex. 5, p. 31).

The Department cannot find any competent substantial evidence in the record to support the ALJ's finding that "abandonment of a [septic] system and connection to central sewer would

remove nitrates at a factor of 9 percent." (emphasis added). RO ¶ 79. However, the 95% figure is supported by competent substantial evidence in the BMAPs; therefore, the 9% figure appears to be a typographical error in paragraph 79 of the RO.

Based on the foregoing reasons, the Petitioners' exception to treat the percent reduction from removing a septic system and connecting the discharge to central sewer in paragraph 79 of the RO as a typographical error is granted as set forth above.

Based on the foregoing reasons, the Petitioners' exception to paragraph 79 is granted.

Petitioners' Second Exception to Paragraph 56.

The Petitioners take exception to the findings in paragraph 56 regarding TMDL allocations between point and nonpoint sources, alleging the ALJ misinterpreted section 403.067, Florida Statutes.

The Petitioners acknowledge that section 403.067(6)(b), Florida Statutes, provides there "may" be an initial allocation between point and nonpoint sources established with the TMDL rule, but if a less detailed initial allocation is established in the TMDL rule, then a detailed allocation must be included in the BMAP. Thus, the Petitioners acknowledge that an initial allocation between point and nonpoint sources is not mandatory under section 403.067(6)(b), Florida Statutes. In paragraph 56 of the RO, the ALJ finds that "The TMDL rules [at issue] did not establish an initial allocation of allowable pollutant loads among point and nonpoint sources," because, at least in part, there are no direct discharges of wastewater, otherwise known as point sources, into the OFSs at issue. To the extent the Petitioners contend that paragraph 56 is a conclusion of law, the Department finds that the Petitioners' interpretation is not more reasonable than that of the ALJ's.

The Petitioners fail to allege that the findings in paragraph 56 of the RO are not supported by competent substantial evidence. This alone is a sufficient basis to reject the Petitioners' exception to paragraph 56 of the RO, because an agency need not rule on an exception that does not identify the legal basis for the exception. § 120.57(1)(k), Fla. Stat. (2020).

Nevertheless, the findings in paragraph 56 are supported by competent substantial evidence in the form of testimony from Department witnesses and the TMDLs related to the BMAPS under challenge. (Frick, T. Vol. II, pp. 272-76; Petitioners' Ex. 7, 8, 9, 10, 11, 12). For example, rule 62-304.410(1)(a), the Santa Fe River Basin TMDLs, reads that "(a) The Wasteload Allocation (WLA) for wastewater sources is not applicable." Fla. Admin. Code R. 62-304.410(1)(a). Because the findings in paragraph 56 are based on competent substantial evidence, the Department may not reject the ALJ's findings of fact.

Moreover, the Petitioners appear to request that supplemental findings be added to paragraph 56 of the RO. Because an agency has no authority to make independent or supplemental findings of fact, the Petitioners' exception to paragraph 56 of the RO must be rejected, *See, e.g., North Port, Fla.,* 645 So. 2d at 487*; Fla. Power & Light Co.,* 693 So. 2d at 1026-027.

Based on the foregoing reasons, the Petitioners' exception to paragraph 56 is denied.

Petitioners' Exceptions to Paragraphs 58 and 59

The Petitioners take exception to the findings regarding the TMDL for Silver Springs in the last two sentences of paragraph 58 of the RO, in which the ALJ found:

> In addition, if the waterbody did not meet the TMDL within a planning period, there would be no way of knowing whether the shortfall could be attributed to any specific source or group of sources. For the same reason, the TMDL did not make an initial allocation of allowable pollutant loads.

RO ¶ 58.

The Petitioners allege that the above portion of RO paragraph 58 is not supported by competent substantial evidence. Contrary to the Petitioners' allegations, this portion of paragraph 58 is supported by competent substantial evidence in the form of Tom Frick's testimony (Frick, T. Vol. 2, pp. 272-76) and the TMDL rules in chapter 62-304, Florida Administrative Code. *See* Fla. Admin. Code R. 62-304, specifically Fla. Admin. Code R. 62-304.500(20) (TMDL for Silver Springs).

Similarly, the Petitioners take exception to "the same analysis" in paragraph 59 of the RO and allege the analysis is "incorrect for the same reasons." Petitioners' Exceptions, p. 14.

The Petitioners fail to allege that the findings in paragraph 59 are not supported by competent substantial evidence. This alone is a sufficient basis to reject the Petitioners' exception to paragraph 59 of the RO. Nevertheless, the findings in paragraph 59 are supported by competent substantial evidence in the form of Tom Frick's testimony (Frick, T. Vol. 2, pp. 272-76) and the TMDL rules in chapter 62-304, Florida Administrative Code. *See* Fla. Admin. Code R. 62-304.410(1)(TMDL for Santa Fe River); 62-304.500(20)(TMDL for Silver Springs and related water bodies); 62-304.505(15)(TMDL for Volusia Blue Spring); 62-304.405(2) (TMDL for the Suwanee River); 62-304.506(1) and (4)(TMDL for Wekiwa Spring and Rock Springs).

Based on the foregoing reasons, the Petitioners' exceptions to paragraphs 58 and 59 are denied.

Petitioners' Exception to Paragraph 131.

The Petitioners' take exception to paragraph 131 of the RO in which the ALJ found that "Each BMAP included all the information required by the Act and section 403.067(7)." RO

¶ 131. The Petitioners contend that the BMAPs "lack load allocations." Petitioners' Exceptions, p. 14.

The Petitioners allege that the finding in paragraph 131 is not supported by competent substantial evidence. Contrary to the Petitioners' allegations, the findings in paragraph 131 are supported by competent substantial from the totality of the evidence in the BMAP documents. (Joint Ex. 1; Joint Ex. 2; Joint Ex. 3; Joint Ex. 4; Joint Ex. 5). Because the finding in paragraph 131 is based on competent substantial evidence, the Department may not reject the ALJ's findings of fact.

Based on the foregoing reasons, the Petitioners' exception to paragraph 131 is denied.

Petitioners' Exception to Paragraph 60.

The Petitioners take exception to the findings of fact in the last three sentences of paragraph 60, in which the ALJ found that:

> 60. Section 373.807(1)(b) requires that a BMAP for an OFS must include identification of each point source or category of nonpoint sources, and an estimated allocation of the pollutant load for each point source or category of nonpoint sources. **The pie charts in section two of each BMAP identified current sources and current load estimates to groundwater from each of the sources described in the pie charts. This estimated allocation was done using the nitrogen source inventory and loading tool (NSILT) described below. The purposes of NSILT and the resulting pie charts were not to establish the TMDL initial or detailed allocations reference[d] above, as argued by Petitioners.**

RO ¶ 60 (emphasis added by the Petitioners in their exception).

The Petitioners contend that the last three sentences of paragraph 60 of the RO are an incorrect interpretation of section 373.807(1)(b) and not supported by competent substantial evidence. Contrary to the Petitioners' allegations, the last three sentences of paragraph 60 are findings of fact and not conclusions of law; and are supported by competent substantial evidence in the form of testimony from Department witnesses and the BMAPs at issue.

The record reflects that the Department, in preparing the BMAPs, used various data sources and the NSILT model to create a series of pie charts showing the relative percentage of loading to groundwater from categories of nonpoint sources. (Frick, T. Vol. 1, pp. 59-60; Frick T. Vol. 2, pp. 175-76; DeAngelo, T. Vol. 3, pp. 360-61; Joint Ex. 1, pp. 30-32; Joint Ex. 2, pp. 46-48; Joint Ex. 3, pp. 34-35; Joint Ex. 4, p. 24; Joint Ex. 5, p. 26). In addition, the record reflects that each BMAP made an explicit allocation consistent with the requirement in section 403.067(7)(a)2., Florida Statutes, by allocating to the entire basin. (Joint Ex. 1, p. 33; Joint Ex. 2, p. 48, Joint Ex. 3, p. 36, Joint Ex. 4, p. 25, Joint Ex. 5, p. 26; see Frick, T. Vol. 1, pp. 69-70, explaining rationale). Because the findings in paragraph 60 are based on competent substantial evidence, the Department may not reject the ALJ's findings of fact.

The Petitioners' also seek to have the Department reweigh the evidence. However, a reviewing agency may not reweigh the evidence presented at a DOAH final hearing, attempt to resolve conflicts therein, or judge the credibility of witnesses. *See, e.g.*, *Rogers*, 920 So. 2d at 30; *Belleau*, 695 So. 2d at 1307; *Dunham*, 652 So. 2d at 896. If there is competent substantial evidence to support an ALJ's findings of fact, it is irrelevant there also may be competent substantial evidence supporting a contrary finding. *See, e.g.*, *Arand Constr. Co.*, 592 So. 2d at 280; *Conshor, Inc.*, 498 So. 2d at 623.

Moreover, the Petitioners appear to request supplemental or alternative findings be added to paragraph 60 of the RO. Because an agency has no authority to make independent or supplemental findings of fact, the Petitioners exception to paragraph 60 of the RO must be rejected. *See, e.g.*, *North Port, Fla.,* 645 So. 2d at 487*; Fla. Power & Light Co.,* 693 So. 2d at 1026-027.

Based on the foregoing reasons, the Petitioners' exception to paragraph 60 is denied.

Petitioners' Exceptions to Paragraphs 68, 72 and 73.

The Petitioners take exception to the findings in paragraphs 68, 72 and 73 of the RO, which describe how the Department considered uncertainty in the fate and transport of nutrients, and how the BMAPs are designed to achieve load reductions.

The Petitioners allege that "In paragraph 68, 72, and 73, the RO resolves conflicting testimony regarding whether DEP could reasonably allocate loads where there was uncertainty involving the "fate and transport" of nitrate in groundwater . . .." Petitioners' Exceptions, p. 17. The Petitioners' seek to have the Department reweigh the evidence. However, a reviewing agency may not reweigh the evidence presented at a DOAH final hearing, attempt to resolve conflicts therein, or judge the credibility of witnesses. *See, e.g., Rogers*, 920 So. 2d at 30; *Belleau*, 695 So. 2d at 1307; *Dunham*, 652 So. 2d at 896. If there is competent substantial evidence to support an ALJ's findings of fact, it is irrelevant there also may be competent substantial evidence supporting a contrary finding. *See, e.g., Arand Constr. Co.*, 592 So. 2d at 280; *Conshor, Inc.*, 498 So. 2d at 623.

Moreover, the Petitioners fail to allege that the findings in paragraphs 68, 72 or 73 are not supported by competent substantial evidence. This alone is a sufficient basis to reject the Petitioners' exceptions to paragraphs 68, 72 and 73 of the RO. Nevertheless, the findings in paragraphs 68, 72 and 73 are supported by competent substantial evidence in the form of testimony from Department witnesses and the BMAP documents. (Frick, T. Vol. 2, pp. 170-71, 280-81; Hicks, T. Vol. 3, pp. 306-307; Joint Ex. 1, pp. 34, 38, 84; Joint Ex. 2, pp. 18-20, 51, 203, 218; Joint Ex. 3, pp. 37-38; Joint Ex. 4, pp. 26-27, 66-67; Joint Ex. 5, pp. 28, 119-20). Because the findings in paragraphs 68, 72 and 73 are based on competent substantial evidence, and inferences therefrom, the Department may not reject the ALJ's findings of fact.

Based on the foregoing reasons, the Petitioners' exceptions to paragraphs 68, 72 and 73 are denied.

Petitioners' Exceptions to Paragraphs 88 and 89.

The Petitioners take exception to paragraphs 88 and 89 of the RO, which describe the Department's efforts to reduce nutrient loading from agricultural sources as described in agricultural BMP manuals, and DEP's limited statutory authority to reduce nutrient loading from agricultural sources. The Petitioners contend essentially that the ALJ's findings are incorrect.

The Petitioners fail to allege that the findings in paragraphs 88 and 89 are not supported by competent substantial evidence. This alone is a sufficient basis to reject the Petitioners' exceptions to paragraphs 88 and 89 of the RO. Nevertheless, the findings in paragraphs 88 and 89 are supported by competent substantial evidence in the form of testimony from Department witnesses and the BMAP documents. (Coyne, T. Vol. 5, pp. 556-59; DEP Ex. 32; Joint Ex. 1; Joint Ex. 2; Joint Ex. 3; Joint Ex. 4; Joint Ex. 5). Because the findings in paragraphs 88 and 89 are based on competent substantial evidence, the Department may not reject the ALJ's findings of fact.

The Petitioners' also seek to have the Department reweigh the evidence. However, a reviewing agency may not reweigh the evidence presented at a DOAH final hearing, attempt to resolve conflicts therein, or judge the credibility of witnesses. *See, e.g.*, *Rogers*, 920 So. 2d at 30; *Belleau*, 695 So. 2d at 1307; *Dunham*, 652 So. 2d at 896. If there is competent substantial evidence to support an ALJ's findings of fact, it is irrelevant there also may be competent substantial evidence supporting a contrary finding. *See, e.g.*, *Arand Constr. Co.*, 592 So. 2d at 280; *Conshor, Inc.*, 498 So. 2d at 623.

Moreover, the Petitioners request that supplemental findings be added to paragraphs 88 and 89 of the RO. The Petitioners contend that DEP could have taken a separate agency action to require reevaluation of best management practices (BMPs) as a condition precedent to adoption of the springs BMAPs. To conclude such a reevaluation was legally required, the Department would need to supplement the ALJ's findings of fact in the RO. Because an agency has no authority to make independent or supplemental findings of fact, the Petitioners' exceptions to paragraphs 88 and 89 of the RO must be rejected. *See, e.g., North Port, Fla.,* 645 So. 2d at 487*; Fla. Power & Light Co.,* 693 So. 2d at 1026-027.

Based on the foregoing reasons, the Petitioners' exceptions to paragraphs 88 and 89 are denied.

Petitioners' Exception to Paragraph 97.

The Petitioners take exception to paragraph 97 of the RO, which provides, in its entirety, that "The preponderance of the evidence showed that DEP made reasonable estimates of expected nutrient reductions that could be achieved through the implementation of agricultural BMPs." RO ¶ 97.

The Petitioners allege that the finding in paragraph 97 is not supported by competent substantial evidence. Contrary to the Petitioners' allegations, the finding in paragraph 97 is supported by competent substantial evidence in the form of testimony from Department witnesses and the BMAP documents. (Coyne, T. Vol. 5, pp. 556-59; Hansen, T. Vol. 6, p. 690; Joint Ex. 1, pp. 39-41, 58-71, 87-96; Joint Ex. 2, pp. 63-68, 99-145, 206-20; Joint Ex. 3, pp. 44-47, 61-75, 93-110; Joint Ex. 4, pp. 32-34, 46-53, 71-88; Joint Ex. 5, pp. 34-36, 65-103, 132-172). Because the finding in paragraph 97 is based on competent substantial evidence, the Department may not reject the ALJ's findings of fact.

The Petitioners' also seek to have the Department reweigh the evidence. However, a reviewing agency may not reweigh the evidence presented at a DOAH final hearing, attempt to resolve conflicts therein, or judge the credibility of witnesses. *See, e.g., Rogers*, 920 So. 2d at 30; *Belleau*, 695 So. 2d at 1307; *Dunham*, 652 So. 2d at 896. If there is competent substantial evidence to support an ALJ's findings of fact, it is irrelevant there also may be competent substantial evidence supporting a contrary finding. *See, e.g., Arand Constr. Co.*, 592 So. 2d at 280; *Conshor, Inc.*, 498 So. 2d at 623.

Moreover, the Petitioners request that supplemental findings be added to paragraph 97 of the RO. The Petitioners recommend additional actions DEP could have included in the BMAPs to reduce nutrients from agricultural activities. To add such actions, the Department would need to supplement the ALJ's findings of fact in the RO. Because an agency has no authority to make independent or supplemental findings of fact, the Petitioners' exception to paragraph 97 of the RO must be rejected. *See, e.g., North Port, Fla.,* 645 So. 2d at 487*; Fla. Power & Light Co.,* 693 So. 2d at 1026-027.

Based on the foregoing reasons, the Petitioners' exception to paragraph 97 is denied.

Petitioners' Exception to Paragraphs 91, 99 and 110.

The Petitioners take exception to the findings in paragraphs 91, 99 and 110 regarding nutrient load reductions from Advanced Agricultural Practices and Procedures, which they allege do not meet statutory criterion for inclusion in a BMAP. Moreover, the Petitioners allege that "it was incorrect for the ALJ to consider these Advanced Agricultural Practices in assessing whether the BMAPs comply with the authorizing statutes." Petitioners' Exceptions, p. 22.

The Petitioners fail to allege that the findings in paragraphs 91, 99 and 110 of the RO are not supported by competent substantial evidence. This alone is a sufficient basis to reject the

Petitioners' exceptions to paragraphs 91, 99 and 110 of the RO, because an agency need not rule on an exception that does not identify the legal basis for the exception. § 120.57(1)(k), Fla. Stat. (2020).

Nevertheless, the findings in paragraphs 91, 99, and 110 are supported by competent substantial evidence in the form of testimony from Department witnesses and the BMAP documents. (Coyne, Vol. 5, pp. 57-59; Frick, Vol. 1, p. 140; Frick, Vol. 2, pp. 151-52; Joint Ex. 1, p, 35; Joint Ex. 3, p. 38). Because the findings in paragraphs 91, 99 and 110 are based on competent substantial evidence, and inferences therefrom, the Department may not reject the ALJ's findings of fact.

Moreover, the Petitioners appear to seek to have the Department reweigh the evidence. However, a reviewing agency may not reweigh the evidence presented at a DOAH final hearing, attempt to resolve conflicts therein, or judge the credibility of witnesses. *See, e.g.*, *Rogers*, 920 So. 2d at 30; *Belleau*, 695 So. 2d at 1307; *Dunham*, 652 So. 2d at 896. If there is competent substantial evidence to support an ALJ's findings of fact, it is irrelevant there also may be competent substantial evidence supporting a contrary finding. *See, e.g.*, *Arand Constr. Co.*, 592 So. 2d at 280; *Conshor, Inc.*, 498 So. 2d at 623. Since the findings of fact disputed by the Petitioners in exceptions to paragraphs 91, 99 and 110 are based on competent substantial evidence, the Department may not reject the ALJ's findings of fact.

Based on the foregoing reasons, the Petitioners' exceptions to paragraphs 91, 99 and 110 are denied.

Petitioners' Exceptions to Paragraphs 127 and 150.

The Petitioners take exception to the findings of fact in paragraph 127 and the conclusions of law in paragraph 150 of the RO, alleging that DEP should not have included in

the BMAPs projects for which certain information was unavailable. Petitioners' Exceptions, pp. 23-26.

The Petitioners fail to allege that the findings in paragraph 127 are not supported by competent substantial evidence. This alone is a sufficient basis to reject the Petitioners' exception to paragraph 127 of the RO, because an agency need not rule on an exception that does not identify the legal basis for the exception. § 120.57(1)(k), Fla. Stat. (2020).

Nevertheless, the findings in paragraph 127 are supported by competent substantial evidence in the form of testimony from Department witnesses and the BMAP documents. (Hansen, T. Vol. 6, pp. 695-96, 709; Paulic, T. Vol. 6, pp. 742, 744; Homann, T. Vol. 7, pp. 832-34, 836, 837-38; Joint Ex. 1; Joint Ex. 2; Joint Ex. 3; Joint Ex. 4; Joint Ex. 5). Because the findings in paragraph 127 are based on competent substantial evidence, the Department may not reject the ALJ's findings of fact.

The Petitioners' also seek to have the Department reweigh the evidence. However, a reviewing agency may not reweigh the evidence presented at a DOAH final hearing, attempt to resolve conflicts therein, or judge the credibility of witnesses. *See, e.g.*, *Rogers*, 920 So. 2d at 30; *Belleau*, 695 So. 2d at 1307; *Dunham*, 652 So. 2d at 896. If there is competent substantial evidence to support an ALJ's findings of fact, it is irrelevant there also may be competent substantial evidence supporting a contrary finding. *See, e.g.*, *Arand Constr. Co.*, 592 So. 2d at 280; *Conshor, Inc.*, 498 So. 2d at 623.

The Department finds that paragraph 150 contains mixed issues of law and fact. Findings of fact include "ultimate facts," sometimes termed mixed issues of law and fact, necessary to determine the issues in a case. *Costin v. Fla. A & M Univ. Bd. of Trs.*, 972 So. 2d 1084,

1086-1087 (Fla. 5th DCA 2008). Whether a given set of facts constitutes the violation of a statute has been held to be a question of ultimate fact that an agency may not reject if it is supported by competent substantial evidence. *Pillsbury v. State, Dep't of Health & Rehab. Serv.*, 744 So. 2d 1040, 1042 (Fla. 2d DCA 1999).

The findings of fact in paragraph 150 are supported by competent substantial evidence in the form of hearing testimony and each of the BMAPs under challenge. (Hansen, T. Vol. 6, pp. 695-96, 709; Paulic, T. Vol. 6, pp. 742, 744; Homann, T. Vol. 7, pp. 832-34, 836, 837-38; Joint Ex. 1; Joint Ex. 2; Joint Ex. 3; Joint Ex. 4; Joint Ex. 5). Because the findings in paragraph 150 are based on competent substantial evidence, the Department may not reject the ALJ's findings of fact in paragraph 150 of the RO.

Moreover, the Department concurs with the ALJ's conclusions of law in paragraph 150 of the RO. Section 373.807(1)(b), Florida Statutes, requires, "at a minimum," a list of projects for which certain information is included. Each of the springs BMAPs includes a table which contains a list of projects with a summary description of how those projects did, or did not, meet the statutory requirements. Therefore, within each of those tables, is a set of projects that fully comply with the information requirements of section 373.807(1)(b), Florida Statutes.

Based on the foregoing reasons, the Petitioners' exceptions to paragraphs 127 and 150 are denied.

Petitioners' Exception to Paragraphs 116 and 129.

The Petitioners take exception to the findings of fact in paragraphs 116 and 129, in which the ALJ found that:

> 116. Each BMAP contained a discussion of future growth management strategies, and that section identified mechanisms that would address future increases in pollutant loading. This section of the BMAPs provided the information required in the only statutory mandate on the subject. *See*

§ 403.067(7)(a)(2), Fla. Stat.

> 129. Each BMAP included a description identifying mechanisms that would address potential future increases in pollutant loading. Petitioners did not present any persuasive evidence that the descriptions of those mechanisms were untruthful or inaccurate.

RO ¶¶ 116 and 129.

The Petitioners contend that the BMAPs fail "to analyze and offset the impacts of future pollutant loading, from both agricultural growth and population growth." Petitioners' Exceptions, p. 27. The Petitioners fail to allege that the findings in paragraphs 116 and 129 of the RO are not supported by competent substantial evidence. This alone is a sufficient basis to reject the Petitioners' exceptions to paragraphs 116 and 129 of the RO, because an agency need not rule on an exception that does not identify the legal basis for the exception. § 120.57(1)(k), Fla. Stat. (2020).

Nevertheless, the findings in paragraphs 116 and 129 are supported by competent substantial evidence in each of the BMAP documents. (Joint Ex. 1, pp. 46-49, 39-42, 73-78; Joint Ex. 2, pp. 73-74, 63-68, 185-98, 221-28; Joint Ex. 3, pp. 51-52, 44-47, 77-84; Joint Ex. 4, pp. 37-38, 32-34, 55-63, 79-88; Joint Ex. 5, pp. 40-45, 34-36, 105-115, 133-172). Because the findings in paragraphs 116 and 129 are based on competent substantial evidence, the Department may not reject the ALJ's findings of fact.

Moreover, the Petitioners appear to request that supplemental findings be added to paragraphs 116 and 129 of the RO. The Petitioners' exceptions to paragraphs 116 and 129 of the RO also must be rejected, because, an agency has no authority to make independent or supplemental findings of fact. *See, e.g., North Port, Fla.,* 645 So. 2d at 487*; Fla. Power & Light Co.,* 693 So. 2d at 1026-1027.

Based on the foregoing reasons, the Petitioners' exceptions to paragraphs 116 and 129 are denied.

Petitioners' Exception to Paragraph 153.

The Petitioners take exception to the conclusions of law in paragraph 153 of the RO, in which the ALJ concluded that:

> 153. The preponderance of the evidence established that each BMAP contains strategies to reduce pollutant loads, with a notation of the load reductions necessary at the spring vent, and a summary of the projected load reductions or credits from BMAP actions and policies. In addition, each BMAP includes a set of five-year milestones, with projections to reduce nitrogen loading by certain percentages over five-year increments. Each BMAP has a milestone of achieving the total amount of needed reduction by the 15-year milestone.

RO ¶ 153.

The Department finds that paragraph 153 contains mixed issues of law and fact. Findings of fact include "ultimate facts," sometimes termed mixed issues of law and fact, necessary to determine the issues in a case. *Costin*, 972 So. 2d at 1086-1087. Whether a given set of facts constitutes the violation of a statute has been held to be a question of ultimate fact that an agency may not reject if it is supported by competent substantial evidence. *Pillsbury*, 744 So. 2d at 1042.

The findings of fact in paragraph 153 are supported by competent substantial evidence within each of the BMAPs under challenge. [Joint Ex. 1 (Santa Fe River BMAP); Joint Ex. 2 (Silver Springs and Upper Silver River and Rainbow Spring Group and Rainbow River BMAP); Joint Ex. 3 (Suwannee River BMAP); Joint Ex. 4 (Volusia Blue Spring BMAP); Joint Ex. 5 (Wekiwa Spring and Rock Springs BMAP)]. Because the findings in paragraph 153 are based on competent substantial evidence, the Department may not reject the ALJ's findings of fact in paragraph 153 of the RO.

Moreover, the Department concurs with the ALJ's conclusion of law in paragraph 153 of the RO that each BMAP contains strategies to reduce pollutant loads as required by section 373.807, Florida Statutes.

Based on the foregoing reasons, the Petitioners' exception to paragraph 153 is denied.

Petitioners' Exception to Paragraph 84.

The Petitioners take exception to paragraph 84 of the RO, which provides, in its entirety, that "Petitioners' experts testified that DEP made two calculation errors in its NSILT analysis when estimating the amount of nitrogen that reaches groundwater from conventional septic systems. These errors relate to population factors and environmental attenuation factors (EAF)." RO ¶ 84.

The Petitioners fail to allege that the findings in paragraph 84 are not supported by competent substantial evidence. This alone is a sufficient basis to reject the Petitioners' exception to paragraph 84 of the RO. Nevertheless, the findings in paragraph 84 are supported by competent substantial evidence in the form of hearing testimony. (Stewart, T. Vol. 10, pp. 1255, 1258-59, 1268-69)(*But see* DEP's explanation cited in RO ¶ 86 and supported by DEP testimony: DeAngelo, T. Vol. 4, pp. 403-409, 413-16; Lyons, T. Vol. 5, p. 626; Homann, T. Vol. 7, pp. 839-41). Because the findings in paragraph 84 are based on competent substantial evidence, the Department may not reject the ALJ's findings of fact.

Moreover, the Petitioners seek to have the Department reweigh the evidence and rely on their own expert witness testimony. However, a reviewing agency may not reweigh the evidence presented at a DOAH final hearing, attempt to resolve conflicts therein, or judge the credibility of witnesses. *See, e.g.*, *Rogers*, 920 So. 2d at 30; *Belleau*, 695 So. 2d at 1307; *Dunham*, 652 So. 2d at 896. If there is competent substantial evidence to support an ALJ's findings of fact, it is

irrelevant there also may be competent substantial evidence supporting a contrary finding. *See, e.g., Arand Constr. Co.*, 592 So. 2d at 280; *Conshor, Inc.*, 498 So. 2d at 623.

Based on the foregoing reasons, the Petitioners' exception to paragraph 84 is denied.

Petitioners' Exception to Paragraph 115.

The Petitioners take exception to the ALJ's first sentence in paragraph 115 of the RO that provides the "Petitioners' 'global issue' argument appeared to be that the BMAPs must be perfect when first adopted." RO ¶ 115. The Petitioners assert they never "suggested the 'BMAPs must be perfect.'" As a result, the Petitioners contend the first sentence in paragraph 115 is not supported by competent substantial evidence.

Contrary to the Petitioners' exception, the first sentence of paragraph 115 is supported by competent substantial evidence in the form of the Petitioners' testimony, and inferences drawn by the ALJ from the totality of the evidence presented at the final hearing. [*See* Knight, Vol. 7, p. 953; DeAngelo, Vol. 4, p. 472 (cross examination question); DeAngelo, Vol. 7, pp. 880-83 (cross examination question)]. The ALJ can "draw permissible inferences from the evidence." *Heifetz*, 475 So. 2d at 1281. *See also Walker v. Bd. of Prof'l Eng'rs*, 946 So. 2d 604, 605 (Fla. 1st DCA 2006) ("It is the hearing officer's function to consider all the evidence presented, resolve conflicts, judge credibility of witnesses, draw permissible inferences from the evidence, and reach ultimate findings of fact based on competent, substantial evidence."). Moreover, drawing reasonable inferences from the evidence, is an evidentiary-related matter wholly within the province of the ALJ, as the "fact-finder" in this administrative proceeding. *See e.g., Tedder*, 842 So. 2d at 1025. The Department is not authorized to reweigh the evidence and draw inferences that are different from those drawn by the ALJ. *See, e.g., Heifetz*, 475 So. 2d at 1281-82; *Greseth*, 573 So. 2d at 1006.

The Petitioners also seek to have the Department reweigh the evidence. However, a reviewing agency may not reweigh the evidence presented at a DOAH final hearing, attempt to resolve conflicts therein, or judge the credibility of witnesses. *See, e.g.*, *Rogers*, 920 So. 2d at 30; *Belleau*, 695 So. 2d at 1307; *Dunham*, 652 So. 2d at 896. If there is competent substantial evidence to support an ALJ's findings of fact, it is irrelevant there also may be competent substantial evidence supporting a contrary finding. *See, e.g.*, *Arand Constr. Co.*, 592 So. 2d at 280; *Conshor, Inc.*, 498 So. 2d at 623. Because the finding of fact disputed by the Petitioners to the first sentence of RO paragraph 115 is based on competent substantial evidence, and inferences therefrom, the Department may not reject the ALJ's finding of fact.

Based on the foregoing reasons, the Petitioners' exception to paragraph 115 is denied.

Petitioners' Exception to Paragraph 154.

The Petitioners take exception to the ultimate conclusion of law in paragraph 154 of the RO, in which the ALJ concluded that:

> 154. Petitioners contended that these BMAPs were invalid because they were not designed to achieve the TMDLs, as required by sections 373.807 and 403.067, and failed to implement provisions of those laws. Contrary to Petitioners' contention, the preponderance of the evidence established that each BMAP complied with the applicable statutory framework and legislative intent of the Act, and of section 403.067(7) regarding the development of BMAPs.

RO ¶ 154.

The Department finds that paragraph 154 contains mixed issues of law and fact. Findings of fact include "ultimate facts," sometimes termed mixed issues of law and fact, necessary to determine the issues in a case. *Costin*, 972 So. 2d at 1086-1087. Whether a given set of facts constitutes the violation of a statute has been held to be a question of ultimate fact that an agency may not reject if it is supported by competent substantial evidence. *Pillsbury*, 744 So. 2d at 1042.

The findings of fact in paragraph 154 are supported by competent substantial evidence within each of the BMAPs under challenge. [Joint Ex. 1 (Santa Fe River BMAP); Joint Ex. 2 (Silver Springs and Upper Silver River and Rainbow Spring Group and Rainbow River BMAP); Joint Ex. 3 (Suwannee River BMAP); Joint Ex. 4 (Volusia Blue Spring BMAP); Joint Ex. 5 (Wekiwa Spring and Rock Springs BMAP)]. Because the findings in paragraph 154 are based on competent substantial evidence, the Department may not reject the ALJ's findings of fact in paragraph 154 of the RO.

Moreover, the Department concurs with the ALJ's conclusion of law in paragraph 154 of the RO that "each BMAP complied with the applicable statutory framework and legislative intent of the Act, and of section 403.067(7) regarding the development of BMAPs." RO ¶ 154.

Based on the foregoing reasons, the Petitioners' exception to paragraph 154 is denied.

Petitioners' Exception to Paragraphs 99 through 110, 114 and 115.

The Petitioners take exception to the findings in paragraphs 99 through 110, 114 and 115 of the RO. The Petitioners allege that DEP's BMAPs for the springs at issue require adaptive management over time, and that adaptive management "is not a plan. It is a statement of intention to plan in the future." Petitioners' Exceptions, p. 37. The Petitioners claim that the BMAPs fall short on credits to meet their reduction goals. *Id.* They then claim that the RO accepts these shortcomings by relying on Advanced Agricultural Practices and Procedures and adaptive management, and object to the ALJ's reliance on these strategies. *Id.* at 38.

The Petitioners, however, fail to allege that any of the findings in paragraphs 99 through 110, 114 and 115 of the RO are not supported by competent substantial evidence. This alone is a sufficient basis to reject the Petitioners' exceptions to paragraphs 99 through 110, 114 and 115 of the RO, because an agency need not rule on an exception that does not identify the legal basis for

the exception. § 120.57(1)(k), Fla. Stat. (2020). Ultimately, the Petitioners merely disagree with the ALJ's findings in each of these paragraphs.

The findings in paragraphs 99 through 110, 114 and 115 of the RO, nevertheless, are supported by competent substantial evidence in the applicable BMAP documents. Paragraph 99 is supported by competent substantial evidence in Joint Exhibit 1 at pages 14 and 35. Paragraph 100 is supported by competent substantial evidence in Joint Exhibit 2 at page 42. Paragraph 101 is supported by competent substantial evidence in Joint Exhibit 2 at pages 18-19. Paragraph 102 is supported by competent substantial evidence in Joint Exhibit 2 at pages 53-57 and 185-86. Paragraph 103 is supported by competent substantial evidence in Joint Exhibit 2 at pages 61, 64-68 and 81-82. Paragraph 104 is supported by competent substantial evidence in Joint Exhibit 2 at pages 19 and 36-39. Paragraph 105 is supported by competent substantial evidence in Joint Exhibit 2 at page 19. Paragraph 106 is supported by competent substantial evidence in Joint Exhibit 2 at page 19. Paragraph 107 is supported by competent substantial evidence in Joint Exhibit 2 at page 19. Paragraph 108 is supported by competent substantial evidence in Joint Exhibit 2 at pages 19-20. Paragraph 109 is supported by competent substantial evidence in Joint Exhibit 2 at page 50. Paragraph 110 is supported by competent substantial evidence in Joint Exhibit 3 at pages 14, 37-38 and 46-47. Paragraph 114 is supported by competent substantial evidence in the form of DEP expert testimony, the BMAPS, and inferences therefrom. (Frick, T. Vol. 2, pp. 61, 88-90, 111, 122, 132, 133-34; Frick, T. Vol. 2, pp. 166-67, 170-171; Hicks, T. Vol. 3, pp. 306-307; DeAngelo, T. Vol. 3, pp. 356-57; Joint Ex. 1, pp. 34, 38, 84; Joint Ex. 2, pp. 18-20, 51, 203; Joint Ex. 3, pp. 37-38, 89; Joint Ex. 4, pp. 26-27, 66-67; Joint Ex. 5, pp. 28, 119-20). The findings at issue in paragraph 115 are supported by competent substantial evidence within the text of the BMAP documents. (Joint Ex. 1 in its entirety, but in particular pp. 14, 30;

Joint Ex. 2 in its entirety, but in particular pp. 18-19, 36; Joint Ex. 3 in its entirety, but in particular pp. 12, 14, 33; Joint Ex. 4 in its entirety, but in particular pp. 11, 23; Joint Ex. 5 in its entirety, but in particular pp. 13, 25). Because the Petitioners' exceptions to paragraphs 99 through 110, 114 and 115 are based on competent substantial evidence, the Department may not reject the ALJ's findings of fact.

The Petitioners' also seek to have the Department reweigh the evidence to reach a different conclusion regarding the Department's compliance with section 373.807, Florida Statutes. However, a reviewing agency may not reweigh the evidence presented at a DOAH final hearing, attempt to resolve conflicts therein, or judge the credibility of witnesses. *See, e.g., Rogers*, 920 So. 2d at 30; *Belleau*, 695 So. 2d at 1307; *Dunham*, 652 So. 2d at 896. If there is competent substantial evidence to support an ALJ's findings of fact, it is irrelevant there also may be competent substantial evidence supporting a contrary finding. *See, e.g., Arand Constr. Co.*, 592 So. 2d at 280; *Conshor, Inc.*, 498 So. 2d at 623.

Based on the foregoing reasons, the Petitioners' exceptions to paragraphs 99 through 110, 114 and 15 are denied.

Petitioners' Exceptions to Paragraphs 130 and 131.

The Petitioners take exception to the findings of fact in the first sentence of paragraph 130 and the entirety of paragraph 131 of the RO, in which the ALJ found that:

> 130. Each BMAP was designed with a target to achieve the TMDL within 20 years after adoption. The water quality monitoring component in each BMAP was sufficient to evaluate whether reasonable progress in pollutant load reductions will be achieved over time.
>
> 131. Each BMAP included all the information required by the Act and section 403.067(7).

RO ¶¶ 130 and 131.

The Petitioners exceptions to paragraphs 130 and 131 of the RO provide no details whatsoever and fail to allege that the findings in paragraphs 130 and 131 are not supported by competent substantial evidence. This alone is a sufficient basis to reject the Petitioners' exceptions to paragraphs 130 and 131 of the RO, because an agency need not rule on an exception that does not identify the legal basis for the exception. § 120.57(1)(k), Fla. Stat. (2020).

Nevertheless, the findings at issue in paragraph 130 are supported by competent substantial evidence within the terms of the BMAP documents. (Joint Ex. 1, pp. 14, 30; Joint Ex. 2, pp. 18-19, 36; Joint Ex. 3, pp. 12, 14, 33; Joint Ex. 4, pp. 11, 23; Joint Ex. 5, pp. 13, 25). Moreover, the findings in paragraph 131 are supported by competent substantial evidence from the totality of the evidence in the BMAP documents. (Joint Ex. 1; Joint Ex. 2; Joint Ex. 3; Joint Ex. 4; Joint Ex. 5). Because the findings in paragraphs 130 and 131 are based on competent substantial evidence, the Department may not reject the ALJ's findings of fact.

Based on the foregoing reasons, the Petitioners' exceptions to paragraphs 130 and 131 are denied.

RULINGS ON PETITIONER GREENHALGH'S EXCEPTIONS:

Petitioner Greenhalgh's Exception to Paragraph 39.

Petitioner Greenhalgh takes exception to the finding of fact in paragraph 39 of the RO that the 2018 BMAP is the first BMAP for the Suwannee River.

Section 120.57(1)(l), Florida Statutes, prescribes that an agency reviewing a recommended order may reject the ALJ's findings of fact if the agency determines from a review of the entire record, and states with particularity in the order, that the findings of fact were not based on competent substantial evidence." § 120.57(1)(l), Fla. Stat. (2020); *Charlotte Cty.,* 18

So. 3d at 1082; *Wills,* 955 So. 2d at 62. The Department cannot find any competent substantial evidence in the record to support the ALJ's finding in the last sentence of RO paragraph 39 that the 2018 BMAP is the first BMAP for the Suwannee River; therefore, this portion of paragraph 39 of the RO is rejected.

Accordingly, the Department modifies the last sentence of paragraph 39 of the RO to read "The 2018 BMAP for Volusia Blue Spring is the first for those waters." RO ¶ 39 (as modified).

Based on the foregoing reasons, Petitioner Greenhalgh's exception to paragraph 39 of the RO is granted as set forth above.

Petitioner Greenhalgh's Exception to Paragraph 44.

Petitioner Greenhalgh does not take exception to any finding of fact in paragraph 44 of the RO. Instead, Petitioner Greenhalgh simply paraphrases language in sections 403.067 and 373.807 of the Florida Statutes. An agency need not rule on an exception that does not identify the legal basis for the exception. § 120.57(1)(k), Fla. Stat. (2020). This alone is a sufficient basis to reject Petitioner Greenhalgh's exception to paragraph 44 of the RO.

The Department finds that paragraph 44 of the RO, while included in the findings of fact section of the RO, contains, in reality, conclusions of law.

To the extent it may be necessary to address Petitioner Greehlaugh's exception to paragraph 44 of the RO, the Petitioner appears to be raising a statutory requirement to list certain information for "projects," such as cost estimates. *See* § 373.807(1)(b)4, 5, and 6, Fla. Stat. (2020). As the ALJ found in RO paragraph 127, each BMAP lists certain projects for which information was unavailable, notwithstanding the best reasonable efforts of the basin management coordinators. This finding is supported by competent substantial evidence.

(Hansen, T. Vol. 6, pp. 695-96 709; Paulic, T. Vol. 6, p. 744; Homann, T. Vol. 7, pp. 833-34, 838).

Moreover, the Petitioner's exception does not address the substance of what the statute requires. The statute requires, "at a minimum," a list of projects for which certain information is included. *See* § 373.807(1)(b), Fla. Stat. (2020). Each of the BMAPs includes a table within a list of projects with a summary description of how those projects did, or did not, meet the statutory requirements. *E.g.*, Joint Ex. 1 at 59. Within each of those tables, is a set of projects that fully complies with the information requirements of section 373.807(1)(b), Florida Statutes.

The Department also concurs with the ALJ's conclusions of law in paragraph 44, and the ALJ's interpretation of Sections 403.067(7)(a) and 373.807(1)(b), Florida Statutes.

Based on the foregoing reasons, Petitioner Greenhalgh's exception to paragraph 44 is denied.

Petitioner Greenhalgh's Exception to Paragraph 45.

Petitioner Greenhalgh does not take exception to any finding of fact in paragraph 45 of the RO. Instead, Petitioner Greenhalgh objects to the historical efficacy of the state's best management practice (BMP) manuals, which are not at issue in paragraph 45 of the RO. An agency need not rule on an exception that does not identify the legal basis for the exception. § 120.57(1)(k), Fla. Stat. (2020). This alone is a sufficient basis to reject Petitioner Greenhalgh's exception to paragraph 45 of the RO.

Moreover, the Department finds that paragraph 45 of the RO, while included in the findings of fact section of the RO, contains conclusions of law. The Department concurs with the ALJ's conclusions of law in paragraph 45, and the ALJ's interpretation of Section 403.067(7)(b), Florida Statutes.

Based on the foregoing reasons, Petitioner Greenhalgh's exception to paragraph 45 is denied.

Petitioner Greenhalgh's Exception to Paragraph 46.

Petitioner Greenhalgh takes exception to paragraph 46 of the RO. His exception to paragraph 46 does not contend that the findings of fact in paragraph 46 of the RO are not supported by competent substantial evidence. An agency need not rule on an exception that does not identify the legal basis for the exception. § 120.57(1)(k), Fla. Stat. (2020). This alone is a sufficient basis to reject Petitioner Greenhalgh's exception to paragraph 46 of the RO.

Moreover, Petitioner Greenhalgh appears to request that supplemental findings be added to paragraph 46 of the RO. Petitioner Greenhalgh's exception to paragraph 46 of the RO must be rejected, because, an agency has no authority to make independent or supplemental findings of fact. *See, e.g., North Port, Fla.,* 645 So. 2d at 487*; Fla. Power & Light Co.,* 693 So. 2d at 1026-027.

Based on the foregoing reasons, Petitioner Greenhalgh's exception to paragraph 46 is denied.

Petitioner Greenhalgh's Exception to Paragraph 56.

Petitioner Greenhalgh takes exception to paragraph 56 of the RO. His exception to paragraph 56, provides in its entirety "Does Pilgrims Pride still discharge directly to the Suwannee River? The City [of] Branford and the City of Fanning Springs discharge stormwater to the Suwannee River." Petitioner Greenhalgh's Exceptions at p. 5.

Petitioner Greenhalgh's exception to paragraph 56 does not contend that the findings of fact in paragraph 56 of the RO are not supported by competent substantial evidence. An agency need not rule on an exception that does not identify the legal basis for the exception.

§120.57(1)(k), Fla. Stat. (2020). This alone is a sufficient basis to reject Petitioner Greenhalgh's exception to paragraph 56 of the RO.

Moreover, Petitioner Greenhalgh appears to request that supplemental findings be added to paragraph 56 of the RO. Petitioner Greenhalgh's exception to paragraph 56 of the RO must be rejected, because, an agency has no authority to make independent or supplemental findings of fact. *See, e.g., North Port, Fla.,* 645 So. 2d at 487*; Fla. Power & Light Co.,* 693 So. 2d at 1026-1027.

Based on the foregoing reasons, Petitioner Greenhalgh's exception to paragraph 56 is denied.

Petitioner Greenhalgh's Exception to Paragraph 59.

Petitioner Greenhalgh takes exception to paragraph 59 of the RO, alleging, in pertinent part, that "The Suwannee BMAP does not address the fecal coliform nor does it identify Branford, Royal, and Ruth Springs in its list of springs." Petitioner Greenhalgh's Exceptions at p. 5. The Petitioner's exception to paragraph 59 does not contend that the findings of fact in paragraph 59 of the RO are not supported by competent substantial evidence. An agency need not rule on an exception that does not identify the legal basis for the exception. § 120.57(1)(k), Fla. Stat. (2020). This alone is a sufficient basis to reject Petitioner Greenhalgh's exception to paragraph 59 of the RO.

Moreover, Petitioner Greenhalgh appears to request that supplemental findings be added to paragraph 59 of the RO. Petitioner Greenhalgh's exception to paragraph 59 of the RO must be rejected, because, an agency has no authority to make independent or supplemental findings of fact. *See, e.g., North Port, Fla.,* 645 So. 2d at 487*; Fla. Power & Light Co.,* 693 So. 2d at 1026-027.

Based on the foregoing reasons, Petitioner Greenhalgh's exception to paragraph 59 is denied.

Petitioner Greenhalgh's Exceptions to Paragraphs 68 and 72

Petitioner Greenhalgh takes exception to paragraphs 68 and 72 of the RO, which describe how the Department addressed the uncertainty involved in the fate and transport of nutrients. Petitioner Greenhalgh's exceptions to paragraphs 68 and 72 do not contend that the findings of fact in paragraphs 68 and 78 of the RO are not supported by competent substantial evidence. An agency need not rule on an exception that does not identify the legal basis for the exception. § 120.57(1)(k), Fla. Stat. (2020). This alone is a sufficient basis to reject Petitioner Greenhalgh's exceptions to paragraphs 68 and 72 of the RO.

Nevertheless, the findings in paragraphs 68 and 72 are supported by competent substantial evidence in the form of testimony from Department witnesses and the BMAP documents. (Frick, T. Vol. 2, pp. 170-71, 280-81; Hicks, T. Vol. 3, pp. 306-307; Joint Ex. 1, pp. 34, 38, 84; Joint Ex. 2, pp. 18-20, 51, 203, 218; Joint Ex. 3, pp. 37-38; Joint Ex. 4, pp. 26-27, 66-67; Joint Ex. 5, pp. 28, 119-20). Because the findings in paragraphs 68 and 72 are based on competent substantial evidence, and inferences therefrom, the Department may not reject the ALJ's findings of fact.

Moreover, Petitioner Greenhalgh seeks to have the Department reweigh the evidence. However, a reviewing agency may not reweigh the evidence presented at a DOAH final hearing, attempt to resolve conflicts therein, or judge the credibility of witnesses. *See, e.g.*, *Rogers*, 920 So. 2d at 30; *Belleau*, 695 So. 2d at 1307; *Dunham*, 652 So. 2d at 896. If there is competent substantial evidence to support an ALJ's findings of fact, it is irrelevant there also may be

competent substantial evidence supporting a contrary finding. *See, e.g., Arand Constr. Co.*, 592 So. 2d at 280; *Conshor, Inc.*, 498 So. 2d at 623.

Petitioner Greenhalgh also appears to request that supplemental findings be added to paragraphs 68 and 72 of the RO. Petitioner Greenhalgh's exceptions to paragraphs 68 and 72 of the RO must be rejected; because an agency has no authority to make independent or supplemental findings of fact. *See, e.g., North Port, Fla.,* 645 So. 2d at 487*; Fla. Power & Light Co.,* 693 So. 2d at 1026-027.

Based on the foregoing reasons, Petitioner Greenhalgh's exceptions to paragraphs 68 and 72 are denied.

Petitioner Greenhalgh's Exception to Paragraph 88.

Petitioner Greenhalgh takes exception to paragraph 88 of the RO, which describes the Department's efforts to reduce nutrient loading from agricultural sources as described in agricultural BMP manuals. The Petitioner's exception to paragraph 88 does not contend that the findings of fact in paragraph 88 of the RO are not supported by competent substantial evidence. An agency need not rule on an exception that does not identify the legal basis for the exception. § 120.57(1)(k), Fla. Stat. (2020). This alone is a sufficient basis to reject Petitioner Greenhalgh's exception to paragraph 88 of the RO.

Nevertheless, the findings in paragraphs 88 are supported by competent substantial evidence in the form of testimony from Department witnesses and the BMAP documents. (Coyne, T. Vol. 5, pp. 556-59; DEP Ex. 32; Joint Ex. 1; Joint Ex. 2; Joint Ex. 3; Joint Ex. 4; Joint Ex. 5). Because the findings in paragraph 88 are based on competent substantial evidence, and inferences therefrom, the Department may not reject the ALJ's findings of fact.

Petitioner Greenhalgh also appears to request that supplemental findings be added to paragraph 88 of the RO. Because an agency has no authority to make independent or supplemental findings of fact, Petitioner Greenhalgh's exception to paragraph 88 of the RO must be rejected. *See, e.g., North Port, Fla.,* 645 So. 2d at 487*; Fla. Power & Light Co.,* 693 So. 2d at 1026-027.

Based on the foregoing reasons, the Petitioner Greenhalgh's exception to paragraph 88 is denied.

Petitioner Greenhalgh's Exception to Paragraph 93.

Petitioner Greenhalgh takes exception to paragraph 93 of the RO, which provides in its entirety "DEP's initial verification occurs before DACS adopts a BMP by rule. Petitioner Greenhalgh's presentation of alleged shortcomings in the verification process of DACS adopted rules was more in the nature of an administrative rule challenge, which was not within the scope of this proceeding." RO ¶ 93.

The Department finds that paragraph 93 of the RO is a mixed finding of fact and conclusion of law. Petitioner Greenhalgh's exception to paragraph 93 does not contend that the findings of fact in paragraph 93 of the RO are not supported by competent substantial evidence. An agency need not rule on an exception that does not identify the legal basis for the exception. § 120.57(1)(k), Fla. Stat. (2020). This alone is a sufficient basis to reject Petitioner Greenhalgh's exception to paragraph 56 of the RO.

Moreover, the Petitioner appears to request that supplemental findings be added to paragraph 93 of the RO. Petitioner Greenhalgh's exception to paragraph 93 of the RO must be rejected, because, an agency has no authority to make independent or supplemental findings of

fact. *See, e.g., North Port, Fla.,* 645 So. 2d at 487*; Fla. Power & Light Co.,* 693 So. 2d at 1026-027.

The Department also concurs with the ALJ's conclusion of law that the "Petitioners' presentation of alleged shortcomings in the verification process of DCAS adopted rules was more in the nature of an administrative rule challenge, which was not within the scope of this proceeding." RO ¶ 93.

Based on the foregoing reasons, Petitioner Greenhalgh's exception to paragraph 93 is denied.

Petitioner Greenhalgh's Exception to Paragraph 97.

Petitioner Greenhalgh takes exception to paragraph 97 of the RO, which provides in its entirety that "The preponderance of the evidence showed that DEP made reasonable estimates of expected nutrient reductions that could be achieved through the implementation of agricultural BMPs." RO ¶ 97.

Findings of fact include "ultimate facts," sometimes termed mixed issues of law and fact, necessary to determine the issues in a case. *Costin v. Fla. A & M Univ. Bd. of Trs.*, 972 So. 2d 1084, 1086-1087 (Fla. 5th DCA 2008). The Department finds that paragraph 97 of the RO is a mixed issue of law and fact.

Contrary to Petitioner Greenhalgh's exception, the finding in RO paragraph 97 is supported by competent substantial evidence, in the form of expert testimony and the BMAP documents.(Coyne, T. Vol. 5, pp. 556-59; Hansen, T. Vol. 6, p. 690; Joint Ex. 1, pp. 39-41, 58-71, 87-96; Joint Ex. 2, pp. 63-68, 99-145, 206-20; Joint Ex. 3, pp. 44-47, 61-75, 93-110; Joint Ex. 4, pp. 32-34, 46-53, 71-88; Joint Ex. 5, pp. 34-36, 65-103, 132-172). Moreover, the Department concurs with the ALJ's conclusion of law.

Based on the foregoing reasons, Petitioner Greenhalgh's exception to paragraph 97 is denied.

Petitioner Greenhalgh's Exception to Paragraph 110.

Petitioner Greenhalgh takes exception to paragraph 110 of the RO, which he claims is a summary of information derived from the review of a table in the Suwannee BMAP. The Petitioner's exception to paragraph 110 does not contend that the findings of fact in paragraph 110 of the RO are not supported by competent substantial evidence. An agency need not rule on an exception that does not identify the legal basis for the exception. § 120.57(1)(k), Fla. Stat. (2020). This alone is a sufficient basis to reject Petitioner Greenhalgh's exception to paragraph 100 of the RO.

Nevertheless, the findings in paragraph 100 are supported by competent substantial evidence in the Suwanee River BMAP document. (Joint Ex. 3, pp. 14, 37-38, 46-47). Because the findings in paragraph 100 are based on competent substantial evidence, and inferences therefrom, the Department may not reject the ALJ's findings of fact.

Petitioner Greenhalgh also appears to request that supplemental findings be added to paragraph 110 of the RO. Because an agency has no authority to make independent or supplemental findings of fact, Petitioner Greenhalgh's exception to paragraph 110 of the RO must be rejected. *See, e.g., North Port, Fla.,* 645 So. 2d at 487*; Fla. Power & Light Co.,* 693 So. 2d at 1026-027.

Based on the foregoing reasons, the Petitioner Greenhalgh's exception to paragraph 110 is denied.

Petitioner Greenhalgh's Exception to Paragraph 115.

Petitioner Greenhalgh takes exception to the following finding in paragraph 115 of the RO: "Even where the projected benefits from projects and programs fall short of the projected required reductions, DEP fulfilled its duty to create implementation plans designed with a target to achieve the TMDL within 20 years." RO ¶ 115.

Petitioner Greenhalgh's exception to paragraph 115 does not contend that the findings of fact in paragraph 115 of the RO are not supported by competent substantial evidence. An agency need not rule on an exception that does not identify the legal basis for the exception. § 120.57(1)(k), Fla. Stat. (2020). This alone is a sufficient basis to reject Petitioner Greenhalgh's exception to paragraph 115 of the RO.

To the extent Petitioner Greenhalgh's exception could be read as a claim that the contested finding is not supported by competent substantial evidence, it is mistaken. The findings in paragraph 115 are supported by competent substantial evidence, in the form of testimony from each of the BMAP managers. (Hansen, T. Vol. 6, p. 696; Hansen, T. Vol. 6, p. 709; Paulic, T. 6, p. 745; Homann, T. Vol. 7, pp. 833-34; Homann, T. 7, p. 838).

Based on the foregoing reasons, Petitioner Greenhalgh's exception to paragraph 115 is denied.

Petitioner Greenhalgh's Exceptions to Paragraphs 116 and 117.

Petitioner Greenhalgh takes exception to the findings of fact in paragraphs 116 and 117, in which the ALJ found that:

> 116. Each BMAP contained a discussion of future growth management strategies, and that section identified mechanisms that would address future increases in pollutant loading. This section of the BMAPs provided the information required in the only statutory mandate on the subject. See § 403.067(7)(a)(2), Fla. Stat.

117. The record reflects that DEP had access to data that shows reasonable projections of increased population in the BMAP areas, as well as increases in agricultural uses. DEP did not include those projections in the proposed BMAPs based on its experience with other programs.

RO ¶¶ 116 and 117.

Petitioner Greenhalgh failed to allege that the findings in paragraphs 116 and 117 of the RO are not supported by competent substantial evidence. This alone is a sufficient basis to reject Petitioner Greenhalgh's exceptions to paragraphs 116 and 117 of the RO, because an agency need not rule on an exception that does not identify the legal basis for the exception. § 120.57(1)(k), Fla. Stat. (2020).

Nevertheless, the findings in paragraphs 116 and 117 are supported by competent substantial evidence in each of the BMAP documents. (Joint Ex. 1, pp. 46-49, 39-42, 73-78; Joint Ex. 2, pp. 73-74, 63-68, 185-98, 221-28; Joint Ex. 3, pp. 51-52, 44-47, 77-84; Joint Ex. 4, pp. 37-38, 32-34, 55-63, 79-88; Joint Ex. 5, pp. 40-45, 34-36, 105-115, 133-172). Because Petitioner Greenhalgh's exceptions to paragraphs 116 and 117 are based on competent substantial evidence, the Department may not reject the ALJ's findings of fact.

Moreover, Petitioner Greenhalgh appears to request that supplemental findings be added to paragraphs 116 and 117 of the RO. Petitioner Greenhalgh's exceptions to paragraphs 116 and 117 of the RO also must be rejected, because, an agency has no authority to make independent or supplemental findings of fact. *See, e.g., North Port, Fla.,* 645 So. 2d at 487*; Fla. Power & Light Co.,* 693 So. 2d at 1026-1027.

Based on the foregoing reasons, Petitioner Greenhalgh's exceptions to paragraphs 116 and 117 are denied.

Petitioner Greenhalgh's Exception to Paragraph 118.

Petitioner Greenhalgh takes exception to paragraph 118 of the RO, which discusses restoration goals that can be achieved notwithstanding substantial increases in population citing the "reasonable assurance plan" for Tampa Bay as an example.

Petitioner Greenhalgh's exception to paragraph 118 does not contend that the findings of fact in paragraph 118 of the RO are not supported by competent substantial evidence. An agency need not rule on an exception that does not identify the legal basis for the exception. § 120.57(1)(k), Fla. Stat. (2020). This alone is a sufficient basis to reject Petitioner Greenhalgh's exception to paragraph 118 of the RO.

Nevertheless, the findings in paragraphs 118 are supported by competent substantial evidence. (Frick, T. Vol 2, pp. 199-200; DeAngelo, T. Vol. 3, 391-92). Because Petitioner Greenhalgh's exceptions to paragraphs 116 and 117 are based on competent substantial evidence, the Department may not reject the ALJ's findings of fact.

Moreover, Petitioner Greenhalgh appears to request that supplemental findings be added to paragraph 118 of the RO. Petitioner Greenhalgh's exception to paragraph 118 of the RO must be rejected, because, an agency has no authority to make independent or supplemental findings of fact. *See, e.g.*, *North Port, Fla.,* 645 So. 2d at 487*; Fla. Power & Light Co.,* 693 So. 2d at 1026-027.

Based on the foregoing reasons, Petitioner Greenhalgh's exception to paragraph 118 is denied.

Petitioner Greenhalgh's Exceptions to Paragraphs 127, 128, 129, 130 and 131.

Petitioner Greenhalgh's exceptions to paragraphs 127, 128, 129, 130 and 131 do not object to any finding in paragraphs 127, 128, 129, 130 or 131. An agency need not rule on an

exception that does not identify the legal basis for the exception. § 120.57(1)(k), Fla. Stat. (2020). This alone is a sufficient basis to reject Petitioner Greenhalgh's exceptions to paragraphs 127, 128, 129, 130 and 131 of the RO.

Based on the foregoing reasons, Petitioner Greenhalgh's exceptions to paragraphs 127, 128, 129, 130 and 131 are denied.

Petitioner Greenhalgh's Exceptions to Paragraphs 145, 146 and 147.

Petitioner Greenhalgh's exceptions to paragraphs 145, 146 and 147 do not object to any conclusion of law in paragraphs 145, 146 or 147. Instead, these exceptions appear to be a commentary thanking the ALJ for quoting the legislative findings and legislative statements regarding DEP's responsibilities for the state's springs.

An agency need not rule on an exception that does not identify the legal basis for an exception. § 120.57(1)(k), Fla. Stat. (2020). This alone is a sufficient basis to reject Petitioner Greenhalgh's exceptions to paragraphs 145, 146, and 147 of the RO.

Based on the foregoing reasons, Petitioner Greenhalgh's exceptions to paragraphs 145, 146 and 147 are denied.

RULINGS ON DEP'S EXCEPTIONS:

DEP's Exception to Paragraph 40.

DEP takes exception to the finding in the last sentence of paragraph 40 that "33 OFSs [have been] designated in section 373.802(4)," (emphasis added), contending this must be a typographical error. DEP contends that the text of each BMAP identifies that the correct number is "30" and not "33." DEP requests that this number be corrected to "30" OFSs or in the alternative be modified to "remove the reference to that specific figure," because that figure is

not supported by competent substantial evidence in the record. Department's Exceptions to Recommended Order, p. 3.

Section 120.57(1)(l), Florida Statutes, prescribes that an agency reviewing a recommended order may reject the ALJ's findings of fact if the agency determines from a review of the entire record, and states with particularity in the order, that the findings of fact were not based on competent substantial evidence." § 120.57(1)(l), Fla. Stat. (2020); *Charlotte Cty.,* 18 So. 3d at 1082; *Wills,* 955 So. 2d at 62. The Department cannot find any competent substantial evidence in the record to support the ALJ's finding in the last sentence of paragraph 40 of the RO that Florida has "33 OFSs designated in section 373.802(4)," Florida Statutes. Instead, each of the five challenged BMAPs specify that 30 and not 33 OFSs is the correct number. (Joint Ex. 1, p. 12; Joint Ex. 2, p. 14; Joint Ex. 3, p. 12; Joint Ex. 4, p. 9; Joint Ex. 5, p. 11). Accordingly, this portion of paragraph 40 of the RO is rejected. RO ¶ 40.

In response to this typographical error, the Department modifies the last sentence of paragraph 40 of the RO to read "Of 30 OFSs designated in section 373.802(4), DEP classified 24 OFSs as impaired for nitrate, and 15 of the 24 are contained within the areas of the five BMAPs challenged in these proceedings." RO ¶ 40 (as modified). The Department concludes that granting this exception as a typographical error, if found to be an erroneous ruling on the agency's part, results in harmless error.

Based on the foregoing reasons, DEP's exception to paragraph 40 of the RO is granted as set forth above.

DEP's Exception to Paragraph 79.

Both DEP and the Petitioners take exception to the portion of the ALJ's finding in paragraph 79 of the RO, which provides that "abandonment of a [septic] system and connection

to central sewer would remove nitrates at a factor of 9 percent." (emphasis added). RO ¶ 79. Both parties contend that the factor of 9 percent is not supported by competent substantial evidence and should be treated as a typographical error.

DEP contends in its corresponding exception that three of the BMAP documents indicate that the figure is 95%, and requests that the number in the RO be treated as a typographical error and changed from 9% to 95%. DEP requests that the Department change the number from 9% to 95%, because the 9% figure is not supported by competent substantial evidence; however, the 95% figure is supported by competent substantial evidence in 3 of the BMAPs. (Joint Ex. 2, p. 54; Joint Ex. 4, p. 29; Joint Ex. 5, p. 31).

The Department cannot find any competent substantial evidence in the record to support the ALJ's finding that "abandonment of a [septic] system and connection to central sewer would remove nitrates at a factor of 9 percent." (emphasis added). RO ¶ 79. However, the 95% figure is supported by competent substantial evidence in the BMAPs; therefore, the 9% figure appears to be a typographical error in paragraph 79 of the RO.

Based on the foregoing reasons, DEP's exception to treat the percent reduction from removing a septic system and connecting the discharge to central sewer in paragraph 79 of the RO as a typographical error is granted as set forth above.

CONCLUSION

Having considered the applicable law and standards of review in light of the findings and conclusions set forth in the RO and the rulings on the above Exceptions, and being otherwise

duly advised, it is

ORDERED that:

A. The Recommended Order (Exhibit A) is adopted, except as modified by the above rulings on Exceptions, and incorporated by reference herein;

B. The Final Order issued on June 29, 2018, adopting the Suwannee River Spring BMAP is approved;

C. The Final Order issued on June 29, 2018, adopting the Volusia Blue Spring BMAP is approved;

D. The Final Order issued on June 29, 2018, adopting the Silver Springs-Rainbow Spring Group BMAP is approved;

E. The Final Order issued on June 29, 2018, adopting the Santa Fe River Springs BMAP is approved; and

F. The Final Order issued on June 29, 2018, adopting the Wekiwa Spring-Rock Springs BMAP is approved.

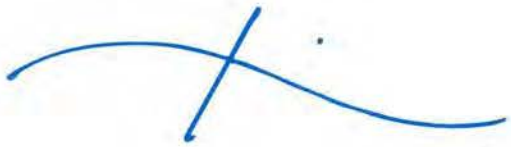
JUDICIAL REVIEW

Any party to this proceeding has the right to seek judicial review of the Final Order pursuant to Section 120.68, Florida Statutes, by the filing of a Notice of Appeal pursuant to Rule 9.110, Florida Rules of Appellate Procedure, with the clerk of the Department in the Office of General Counsel, 3900 Commonwealth Boulevard, M.S. 35, Tallahassee, Florida 32399-3000; and by filing a copy of the Notice of Appeal accompanied by the applicable filing fees with the

appropriate District Court of Appeal. The Notice of Appeal must be filed within 30 days from the date this Final Order is filed with the clerk of the Department.

DONE AND ORDERED this 18th day of May, 2021, in Tallahassee, Florida.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION



NOAH VALENSTEIN
Secretary

Marjory Stoneman Douglas Building
3900 Commonwealth Boulevard
Tallahassee, Florida 32399-300

FILED ON THIS DATE PURSUANT TO § 120.52, FLORIDA STATUTES, WITH THE DESIGNATED DEPARTMENT CLERK, RECEIPT OF WHICH IS HEREBY ACKNOWLEDGED.

Syndie Kinsey Digitally signed by Syndie Kinsey Date: 2021.05.18 16:10:16 -04'00'

CLERK DATE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Final Order has been sent by electronic mail to:

John R. Thomas, Esq. Law Office of John R. Thomas, P.A. 8770 Dr. Martin Luther King, Jr., St. N St. Petersburg, FL 33702 jrthomasesq@gmail.com	Douglas MacLaughlin, Esq. 319 Greenwood Drive West Palm Beach, FL 33405 douglasmaclaughlin@aol.com
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this 18th day of May, 2021.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION

Stacey D. Cowley

STACEY D. COWLEY
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STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

SIERRA CLUB,

Petitioner,

v.

DEP (OGC) Case No. 17-1165
DOAH CASE NO. 19-0644

DEPARTMENT OF ENVIRONMENTAL PROTECTION,

Respondent.
_____/

THOMAS GREENHALGH,

Petitioner,

v.

DEP (OGC) Case No. NO. 17-1165
DOAH CASE NO. 19-0645

DEPARTMENT OF ENVIRONMENTAL PROTECTION,

Respondent.
_____/

SAVE THE MANATEE CLUB, INC.,

Petitioner,

v.

DEP (OGC) Case No. 17-1167
DOAH CASE NO. 19-0646

DEPARTMENT OF ENVIRONMENTAL PROTECTION,

Respondent.
_____/

SILVER SPRINGS ALLIANCE, INC.; and RAINBOW RIVER CONSERVATION, INC.,

Petitioners,

v. **DEP (OGC) Case No. 18-1060**
DOAH CASE NO. 19-0647

DEPARTMENT OF ENVIRONMENTAL PROTECTION,

Respondent.
_____/

OUR SANTA FE RIVER INC.; ICHETUCKNEE ALLIANCE, INC.; and JIM TATUM,

Petitioners,

v. **DEP (OGC) Case No. 18-1061**
DOAH CASE NO. 19-0648

DEPARTMENT OF ENVIRONMENTAL PROTECTION,

Respondent.
_____/

PAUL STILL,

Petitioner,

v. **DEP (OGC) Case No. 18-1061**
DOAH CASE NO. 19-0649

DEPARTMENT OF ENVIRONMENTAL PROTECTION,

Respondent.
_____/

FRIENDS OF WEKIVA RIVER, INC.,

Petitioner,

v. **DEP (OGC) Case No. 18-1065**
DOAH CASE NO. 19-0650

DEPARTMENT OF ENVIRONMENTAL PROTECTION,

Respondent.
_____/

DEPARTMENT'S RESPONSE TO EXCEPTIONS BY PETITIONERS

Respondent, the State of Florida Department of Environmental Protection (the Department), submits the following in opposition to the exceptions served by Petitioners Sierra Club, Inc., Save the Manatee Club, Inc., Silver Springs Alliance, Inc., Rainbow River Conservation, Inc., Our Santa Fe River, Inc., Ichetucknee Alliance, Inc., Jim Tatum, and Friends of Wekiva River, Inc. (Petitioners), as follows:

PERTINENT STANDARDS FOR CONSIDERATION OF EXCEPTIONS

Section 120.57(1)(1), Florida Statutes, forbids an agency reviewing a recommended order from rejecting or modifying the findings of fact of an ALJ, "unless the agency first determines from a review of the entire record, and states with particularity in the order, that the findings of fact were not based on competent substantial evidence." § 120.57(1)(1), Fla. Stat. (2019); *Charlotte Cty. v. IMC Phosphates Co.*, 18 So. 3d 1079, 1082 (Fla. 2d DC A 2009); *Wills v. Fla. Elections Comm'n, 955* So. 2d 61, 62 (Fla. 1st DC A 2007). The term "competent substantial evidence" does not relate to the quality, character, convincing power, probative value or weight of the evidence. Rather, "competent substantial evidence" refers to the existence of some evidence (quantity) as to each essential element and as to its admissibility under legal rules of evidence. *See e.g.,*

Scholastic Book Fairs, Inc. v. Unemployment Appeals Comm'n, 671 So. 2d 287, 289 n.3 (Fla. 5th DCA 1996).

The Department may not reweigh the evidence presented at a Division of Administrative Hearings (DOAH) final hearing, attempt to resolve conflicts therein, or judge the credibility of witnesses. *See e.g., Rogers v. Dep't of Health*, 920 So. 2d 27, 30 (Fla. 1st DCA 2005); *Belleau v. Dep't of Envt'l. Prot.*, 695 So. 2d 1305, 1307 (Fla. 1st DCA 1997); *Dunham v. Highlands Cty. Sch. Bd.*, 652 So. 2d 894, 896 (Fla. 2d DCA 1995). If the DOAH record discloses any competent substantial evidence supporting a challenged factual finding of the ALJ, the agency is bound by such factual finding in preparing the Final Order. *See, e.g., Walker v. Bd. of Prof'l Eng'rs*, 946 So. 2d 604, 605 (Fla 1st DCA 2006); *Fla. Dep't of Corr. v. Bradley*, 510 So. 2d 1122, 1123 (Fla. 1st DCA 1987). If there is competent substantial evidence to support an ALJ's findings of fact, it is irrelevant that there may also be competent substantial evidence supporting a contrary finding. *See, e.g., Constr. Co. v. Dyer*, 592 So. 2d 276, 280 (Fla. 1st DCA 1991); *Conshor, Inc., v. Roberts*, 498 So. 2d 622, 623 (Fla. 1st DCA 1986). In addition, an agency has no authority to make independent or supplemental findings of fact. *See, e.g., Fla. Power & Light Co. v. Siting Bd*., 693 So. 2d 1025, 1026-1027 (Fla. 1st DCA 1997); *North Port. Fla. v. Consol. Minerals*, 645 So. 2d 485, 487 (Fla. 2d DCA

1994). An agency need not rule on an exception that does not identify the legal basis for the exception. § 120.57(1)(k), Fla. Stat. (2020).

If the reviewing agency modifies or rejects a conclusion of law set out in the ALJ's recommended order, it must state with particularity the reasons for the modification or rejection, and must find that its substituted conclusion of law "is as or more reasonable than that which was rejected or modified." § 120.57(1)(l), Fla. Stat.[1]

SYNOPSIS

The Department will address exceptions to paragraphs from the Recommended Order in the order presented in the exceptions. In many of those paragraphs within the Recommended Order, the ALJ presented a relatively innocuous finding which describes a specific action the Department took when creating a basin management action plan (BMAP). In many of the exceptions, Petitioners proceed from that innocuous finding to an argument that the Department should have done something different. Generally, their exceptions would require the Department to endorse an alternative factual theory which would suggest a different legal conclusion. The exceptions share a general defect: by asking the Department to accept a different version or characterization of the facts,

[1] All citations to the Florida Statutes are intended to refer to the 2020 version of those statutes.

they are asking the Department to make independent or supplemental findings of fact. As noted above, this pattern is inconsistent with the Department's statutory duties when considering a recommended order. For the following reasons, each of the exceptions should be rejected.

To the extent the exceptions raise some ostensible legal basis to modify the Recommended Order, another common pattern emerges. Where the Petitioners argue that the Department should have taken a different course of action, they cannot identify a statute that would require what they ask for. Contrary to Petitioners' arguments, there is no statutory requirement for the Department to have performed a more detailed allocation of pollutant loads. There is no statutory mandate for the Department to compile, at the time a BMAP is issued, a list of "credits" that would be projected to achieve compliance with nutrient reduction goals. No statute prohibits the Department from mentioning or considering the potential of future management initiatives, such as improved agricultural practices, that could achieve future nutrient reductions. No statute requires the Department to make projections on future population growth or changes in future agricultural practices. With the exception of typographical comments, Petitioners do not provide any reason to reject any proposed findings or conclusions of law.

RESPONSES TO SPECIFIC EXCEPTIONS

1. **Typographical errors.** The Department agrees with the exceptions as to typographical errors noted in paragraphs 56 and 79.

2. **Paragraph 56 (substantive)**. Petitioners take exception to the findings of fact within paragraph 56 of the Recommended Order, where the ALJ found that "The TMDL rules did not establish an initial allocation of allowable pollutant loads among point and nonpoint sources."

3. For explanation, section 403.067(6)(b) of the Florida Statutes can be labeled a follows:

> Allocation of total maximum daily loads. The total maximum daily loads shall include establishment of reasonable and equitable allocations of the total maximum daily load between or among point and nonpoint sources that will alone, or in conjunction with other management and restoration activities, provide for the attainment of the pollutant reductions established pursuant to paragraph (a) to achieve water quality standards for the pollutant causing impairment. **[1]** The allocations may establish the maximum amount of the water pollutant that may be discharged or released into the water body or water body segment in combination with other discharges or releases. **[2]** Allocations may also be made to individual basins and sources or as a whole to all basins and sources or categories of sources of inflow to the water body or water body segments. **[3A]** An initial allocation of allowable pollutant loads among point and nonpoint sources may be developed as part of the total maximum daily load. **[3B]** However, in such cases, the detailed allocation to specific point sources and specific categories of nonpoint sources shall be established in the basin management action plan pursuant to subsection (7) . . . .

§403.067(6)(b), Fla. Stat. (emphasis and numbering supplied).

4. Petitioners' main argument, simplified, is this: as a matter of law, the total maximum daily loads (TMDLs) for the Outstanding Florida Springs (OFS) at issue created an allocation of the type described in category **[3A]** as labelled above. Petitioners argue that because the TMDL rule made an allocation as described in **[3A]**, the Department was required to make the "detailed allocation" described in **[3B].**

5. The ALJ found that the TMDLs for the OFS did not make an allocation of the type described in **[3A]**. [Recommended Order ¶ 56]. This finding is supported by competent substantial evidence, including the text of the TMDL rules [Pets Ex. 7-12], together with the testimony of Tom Frick. [T. II 272-276]. To the extent this sentence could be deemed a mislabeled conclusion of law, Petitioners cannot meet their burden of showing that their proposed interpretation is more reasonable than the ALJ's. *See* § 120.57(1)(l), Fla. Stat. (2020).

6. Petitioners' proposed argument does not fit the text of the statute, for several reasons. First, sentences **[1]**, **[2]**, and **[3A]** say what the Department "may" do – in other words, the statute creates a list of options when the Department allocates pollutant loads. Their theory makes sense only if sentence **[3A]** were mandatory in every instance. Their interpretation requires the reader to substitute "must" for "may," and to disregard sentences **[1]** and **[2].** Their interpretation also requires the reader to substitute the phrase "in all

cases," for "in such cases," in sentence **[3B].** The argument must be rejected because the Department cannot, in the guise of interpretation, change or add words to the statute. *Reynolds v. State*, 842 So. 2d 46, 49 n. 2 (Fla. 2002)

7. Furthermore, sentence **[3A]** refers to "allowable pollutant loads among point and nonpoint sources." As the ALJ succinctly explained, "The TMDL rules did not establish an initial allocation of allowable pollutant loads among point and nonpoint sources. There are no direct discharges of wastewater into the OFSs at issue, so there are no allocations established among individual point sources in these TMDL rules." [Recommended Order ¶ 56]. Competent substantial evidence supports this finding, including the simple observation in the TMDLs that waste load allocations were for NPDES sources were not applicable. [T. II at 175, Pets. Exs.7, 8, 9, 10, 11, 12].

8. As a secondary argument, Petitioners appear to argue that the BMAPS violate the more general requirement in the statute quoted above, to "include establishment of reasonable and equitable allocations of the total maximum daily load between or among point and nonpoint sources that will alone, or in conjunction with other management and restoration activities, provide for the attainment of the pollutant reductions established pursuant to paragraph (a) to achieve water quality standards for the pollutant causing impairment." §403.067(6)(b), Fla. Stat. The ALJ did not make any findings that would provide

any support for this secondary argument. This argument must be rejected because it would require the Department to make independent or supplemental findings of fact.

9. **Paragraphs 58 and 59.** Paragraph 58 of the Recommended Order explains and summarizes a TMDL; the paragraph also explains why the TMDL cannot be deemed an initial allocation of allowable pollutant loads. Paragraph 58, a description of what the Department actually did, is supported by competent substantial evidence, including the TMDL rules and the testimony of Tom Frick. [T. II 272-276]. Otherwise, Petitioners either fail to state a legal basis for an exception, and ask that the Department make supplemental findings of fact. Petitioners make a cursory exception to paragraph 59 "for the same reasons," but fail completely to state a legal basis for the exception. Paragraph 59 is supported by competent substantial evidence, including the same testimony and the text of the other TMDLs.

10. **Paragraph 60.** Paragraph of the Recommended Order addresses a requirement in section 373.807(1)(b)(7) of the Florida Statutes. This statute, among other things, creates more specific requirements (as contrasted with section 403.067) for the implementation of TMDLs for OFS, through BMAPs. Section 373.807(1)(b) is a list of items that the Department must include in those BMAPs. Subsection (7) generally requires the Department to provide information regarding

existing point sources and categories of point sources, and concludes with a requirement to provide an "estimated allocation of the pollutant load . . . for each point source or category of nonpoint sources."

11. The record shows that the Department, in preparing the BMAPs, used various data sources and the NSILT model to create a series of pie charts showing the relative percentage of loading to groundwater from categories of nonpoint sources. [T. I at 59-60; II at 175-176 (Frick); T. III at 360-361 (DeAngelo)]. Paragraph 60 describes how the Department went about this; because its description is consistent with the record, paragraph 60 is supported by competent substantial evidence.

12. Paragraph 60 cannot accurately be described as a mislabeled conclusion of law; it describes only what the Department did in preparing the BMAPs. Nonetheless, Petitioners appear to argue that the paragraph should be modified to include a conclusion of law. Petitioners appear to argue that the "estimated allocation" reference in subsection 373.807(1)(b)(7) required the Department to mandate allocations or reductions by categories of nonpoint sources. This interpretation is not consistent with the plain language of the statute or the statute as a whole, and must be rejected.

13. The context of subsection 373.807(1)(b)(7) addresses informational requirements for existing sources. The use of the adjective "estimated," in

"estimated allocation," tends to indicate something other than a mandate. The pie charts within the BMAPs depicted the information required by the statute.

14. Considering the statute as a whole, the statute requires flexible implementation of TMDLs through the use of nonregulatory and incentive programs. *Id*. § 403.067(1). The statute requires the use of existing water quality protection programs and identifying funding strategies, not the creation of new mandates. § 403.067(7)(a)1. The statute as a whole does not suggest that a reference to an "estimated allocation" can be read as anything other than an informational requirement.

15. In any case, chapter 403 provides a definitive answer on the what type of "allocation" must be included in a BMAP.

> A basin management action plan must equitably allocate, pursuant to paragraph (6)(b), pollutant reductions to individual basins, as a whole to all basins, or to each identified point source or category of nonpoint sources, as appropriate . . . .

§ 403.067(7)(a)2, Fla. Stat. Petitioners do not contend, and did not prove, that the Department failed to meet this requirement; if that were their argument, the ALJ failed to make any finding supporting that argument. The record shows that each BMAP made an explicit allocation consistent with this requirement, by allocating to the entire basin (i.e., "as a whole to all basins"). [Joint Ex. 1 at 33 ("The total load that is required to be reduced in the basin is being allocated to the entire basin and actions defined by the BMAP to reduce loading to the aquifer are needed to

implement this allocated load."); Joint Ex. 2 at 48; Joint Ex. 3 at 36; Joint Ex. 4 at 25; Joint Ex. 5 at 26; *see* T. I at 69-70 (Frick, explaining reasoning)]. Again, the Petitioners are asking for a supplemental finding of fact. If it is necessary to consider the legal argument presented in this exception, the argument should be rejected.

16. **Paragraphs 68, 72, and 73.** These paragraphs of the Recommended Order described how the Department considered uncertainty in the fate and transport of nutrients, and how the BMAPs are designed to achieve load reductions. This BMAP documents and the testimony of Department witnesses support those descriptions. [T. I at 58-59, T. III at 306-307 (Hicks); T. II at 170-171, 280-281 (Frick)]. Therefore, competent substantial evidence supports the findings in those paragraphs. Otherwise, Petitioners' exception should be rejected because it asks for supplemental and substituted findings of fact. Other arguments regarding the requirements for "initial allocations" should be rejected because, as noted above, competent substantial evidence supports the findings that none of the TMDLs created initial allocations that would trigger requirement for "detailed allocations" in the BMAPs.

17. **Paragraphs 88 and 89.** In paragraphs 88 and 89, the ALJ made findings on the relative effectiveness of Best Management Practices (BMPs) in reducing nutrient loading from agricultural source. Those findings are supported by

expert testimony. [T. V at 556-559 (Coyne)]. Petitioners fail to articulate any legal argument in support of the exception, other than the findings are "incorrect."

18. Petitioners argue that the Department could have taken a separate agency action, to require a reevaluation of BMPs. *See* § 403.067(7)(c)4, Fla. Stat. (describing process for reevaluation of BMPs when certain conditions are satisfied). However, no statute requires the Department to undertake such a reevaluation as a condition precedent to the adoption of a BMAP. The validity of a BMP, or any potential reevaluation of a BMP, is the result of a separate agency action which is not at issue in these proceedings. In order to conclude that such a reevaluation were legally required, the Department would need to supplement the ALJ's findings of fact, which it cannot do on review of a recommended order. The exception must be rejected.

19. **Paragraphs 91, 99, and 110.** In these paragraphs, the ALJ observed that the BMAPs include descriptions of "advanced agricultural practices," and related terms. The ALJ's description of the BMAPs is supported by competent substantial evidence. The ALJ found, supported by competent substantial evidence [T. V at 558-559], that those practices are not included in a BMP manual; are not required by the BMAP; and will require additional funding and design.

20. Again, Petitioners argue that the Department should make supplemental findings on this issue. Contrary to Petitioners argument, the ALJ did

not find that the practices in question were necessary "in assessing whether the BMAPs comply with the authorizing statutes." [Petitioners Exceptions at 23]. For these reasons, the Department should reject the exception.

21. **Paragraphs 127 and 150.** Under section 373.807(b) of the Florida Statutes, the Department was required to list specific projects that would implement the TMDL, and to include certain information about those projects. As the ALJ found, each BMAP lists certain projects for which information was unavailable. Because testimony supports the ALJ's description regarding what the Department actually did [T. VI at 695-696 (Hansen); T. VI at 744 (Paulic); [T. VI at 709 (Hansen); T. VII at 833-834 (Homann); T. VII at 838 (Homann)], the findings in these paragraphs are supported by competent substantial evidence and cannot be rejected.

22. Petitioners argue that the BMAPs should be modified to remove projects where certain information was unavailable. Petitioners can cite no statute which would require such a change; the statute does not prohibit the Department from describing projects with incomplete information.

23. Petitioners' argument does not, in any case, address the substance of what the statute requires. The statute requires, "at a minimum," a list of projects for which certain information is included. Each of the BMAPs includes a table within a list of projects with a summary description of how those projects did, or did not,

meet the statutory requirements. Within each of those tables, then, is a finite set of projects that fully comply with the information requirements of section 373.807(1)(b), Fla. Stat. The dispute, then, is nothing more than a question of formatting a table within a document. Petitioners cannot provide any legal authority to require a different type of formatting for tables within a BMAP.

24. **Paragraphs 116 and 129.** Section 403.067(7)(a)2 of the Florida Statutes requires the Department to identify mechanisms that would address future increases in pollutant loading. In paragraph 116, the ALJ summarized the content of the statute. In paragraph 129, the ALJ found that the Department complied with this mandate by identifying those mechanisms within the text of the BMAPs. This finding is supported by competent substantial evidence.

25. Again, Petitioners offer an extraneous legal conclusion in the place of a factual finding. To the extent it is necessary to consider the alternative legal conclusion, it must be rejected. A statute specifically mentions what is required of the Department with respect to the evaluation of future conditions. "The plan must also identify the mechanisms that will address potential future increases in pollutant loading." § 403.067(7)(a)2, Fla. Stat. The statute does not require the Department to analyze future growth, and the specific mention in subsection 403.067(7)(a)2 implies that the Department is not required to do more than what is specifically required in that subsection. *Thayer v. State*, 335 So. 2d 815, 817 (Fla.

1976). In any case, there is no express statutory mandate for the Department to analyze future changes in population or agricultural practices. The decision not to do so, standing alone, does not violate the statute.

26. Petitioners offer a theory that the Department as a matter of policy should have made a projection regarding future events, and that the omission to do so rendered the planning process so inadequate that the BMAPs fail to meet more general statutory requirements. In order to accept this argument, again, the Department would be required to make supplemental findings of fact, and the Department cannot do so in its consideration of the Recommended Order. The Department should reject this exception.

27. **Paragraph 84.** In paragraph 84, the ALJ described the testimony of Department witnesses, who testified that they made two calculation errors in estimating the loading of nitrogen to groundwater from conventional septic systems. The ALJ accurately described the testimony [Recommended Order ¶ 84, T. III at 389-390, T. IV at 403-409, 413-416 (DeAngelo), T. V at 626 (Lyon)], so the finding is supported by competent substantial evidence. In a separate finding, the ALJ observed that a recalculation of those figures would not lead to any changes in management strategies for associated remediation plans. [Recommended Order ¶ 86]. That finding is supported by the same competent substantial evidence.

28. Petitioners argue that the errors were of greater magnitude, sufficient to render the Department's calculations "highly suspect." [Petitioners' Exceptions at 32]. This exception would require the Department to reject a finding of fact supported by competent substantial evidence, and to make a supplemental finding of fact. Again, the Department cannot do so in its consideration of the Recommended Order. The Department should reject the exception to paragraph 84.

29. **Paragraph 115.** In paragraph 115, the ALJ observed that Petitioners' general argument "appeared to be" that BMAPs must be perfect when adopted. In the context of the Recommended Order, that observation is a reasonable inference or characterization from Petitioners' proposed recommended order. [Proposed Recommended Order ¶ 79, 85, 88, 133, 236]. This exception should be rejected.

30. **Paragraphs 154, 99-110, 114, and 115.** Petitioners take exception to the second sentence of paragraph 154, arguing that the BMAP did not comply with the applicable statutory framework and legislative intent of the statutes. Petitioners appear to make a related argument regarding paragraphs 99-110, 114, and 115.

31. To the extent that the exception could be read to identify a legal basis, Petitioners are arguing that a statute required to Department to include, within the BMAP at the time of its initial adoption, sufficient "credits" that would be projected to achieve compliance with the TMDL. However, Petitioners do not identify any statute which would have required the Department to do so. To

paraphrase the most closely related statutory text on that subject, the Legislature required that the BMAPs create an implementation plan designed with a target to achieve the TMDL § 373.801(1)(b), Fla. Stat. The ALJ found that the Department complied with that requirement [Recommended Order ¶ 115], and the findings on that point are supported by competent substantial evidence. [T. VI at 696 (Hansen); T. VI at 745 (Paulic); T. VI at 709 (Hansen); T. VII at 833-834 (Homann);] T. VII at 838 (Homann)].

32. As the ALJ observed [Recommended Order ¶ 113], existing statutes account for the potential that the BMAPs will not make progress as planned. Each BMAP has a set of five-year milestones for achieving the total amount of planned reductions, and the Department must submit a report to the Legislature if it determines that those milestones will not be met. § 403.0675, Fla. Stat.

33. Otherwise, Petitioners present a factual argument that the BMAP unreasonably relied upon principles of adaptive management and voluntary programs. Again, Petitioners are unable to tie this assertion to any statutory requirement. The statute does not prohibit the consideration of adaptive management or require the Department to remain silent on benefits that could be derived from voluntary programs. Again, this part of the exception would require the Department to make supplemental findings of fact.

34. Construing the exception generously, Petitioners also argue that the Department's plan is so speculative that it cannot be deemed to have a target to achieve the TMDL within the period required by statute. § 373.803(1)(b)8, Fla. Stat. If that were the Petitioners' theory, they failed to persuade the trier of fact on that issue. Thus, the Department could only accept this exception if it chose to make a set of supplemental findings on the supposed inadequacy of the BMAPs. Again, the Department cannot do so in its review of the Recommended Order.

Submitted this 15th day of March 2021.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION

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CERTIFICATE OF SERVICE

I CERTIFY that a true copy of the foregoing was emailed to **John R. Thomas**, Esq., 8770 Dr. Martin Luther King, Jr., St. N., St. Petersburg, Florida 33702 at jrthomasq@gmail.com; **Terrell Arline**, 1819 Tamiami Drive, Tallahassee, FL 32301, at terrell@arlinelaw.com; **Douglas MacLaughlin**, 319 Greenwood Drive, West Palm Beach, FL 33405 at douglasmaclaughlin@aol.com; **Anne Michelle Harvey**, 500 N. Maitland Ave., Suite 210, Maitland, FL 32751 at AHarvey@savethemanatee.org; and **Paul Still**, 14167 SW 101st Ave., Starke, Florida 32091 at stillpe@aol.com on this 15th day of March 2021.

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