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November 5, 2020

Bill Bartnick, Environmental Administrator  
Office of Agricultural Water Policy  
Florida Department of Agriculture and Consumer Services  
The Mayo Building  
407 S. Calhoun St., Mail Stop E1  
Tallahassee, FL 32399-0800

**RE: Rule Development Workshop for 5M-1 (Rulemaking for  
the Florida Department of Agriculture and Consumer  
Services' Implementation of SB 712 – The Clean Waterways Act)**

**Ocean Conservancy's written comments on the 5M-1 Rulemaking**

Dear Mr. Bartnick:

Ocean Conservancy<sup>1</sup> is pleased to submit the following comments to the Office of Agricultural Water Policy ('Office') as the Florida Department of Agriculture and Consumer Services ('FDACS', 'the Agency') works to develop rules ('5M-1')<sup>2</sup> for the implementation of the Clean Waterways Act ('The Act', 'SB 712').<sup>3</sup>

Ocean Conservancy, the world's oldest marine conservation oriented non-profit organization, has worked for more than 30 years to protect and conserve Florida's water resources. We work constantly to highlight the connections between the springs, streams, rivers and lakes of Florida's interior and the coral reefs, estuaries, mangrove swamps, and coastal resources that fringe the state. A single drop of water in Florida might emerge from the aquifer, flow through the Kissimmee River, filter through the Everglades, trickle into Florida Bay, and make its way onto the Florida Coral Reef Tract – accordingly, all of these ecosystems are deeply tied together, and Florida's aquatic resources are therefore a critical part of not just the state's unique wilderness, but also of its economic prosperity.

Florida needs clean and abundant freshwater to hydrate economically critical agricultural interests throughout the state, allowing for the production of iconic and valuable Floridian crops like citrus. Clean water is likewise critically important in keeping our beaches clean and free from harmful algal blooms, helping to drive the one-of-a-kind Floridian tourism economy that brings almost \$40 billion to the state gross domestic product and employees more than 600,000 Floridians. And that water is also the lynchpin of healthy and resilient freshwater and marine fisheries, where Florida shines as the sportfishing capital of the world, and where more than 200,000 jobs are sustained in fishing and fishing-adjacent businesses and industries in the state.

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<sup>1</sup> Ocean Conservancy is working to protect the ocean from today's greatest global challenges. Together with our partners, we create science-based solutions for a healthy ocean and the wildlife communities that depend on it

<sup>2</sup> Florida Department of Agriculture and Consumer Services Office of Agricultural Water Policy, *Notice of Rule Development 5M-1*, available at <https://www.fdacs.gov/content/download/94217/file/NRD5M-1.0018and9.pdf> (accessed November 4, 2020).

<sup>3</sup> Florida Senate, *CS/CS/SB 712: Environmental Resource Management*, available at <https://www.flsenate.gov/Session/Bill/2020/712> (accessed November 4, 2020).

Ocean Conservancy acknowledges all of these impacts, and we strive to be a good partner with rulemakers, the agricultural industry, and other stakeholders, especially when it comes to implementing the much needed provisions of SB 712. To that end, we would like to offer the following recommendations to the Office as it considers rulemaking for 5M-1.

#### **Effectiveness Monitoring of the Program**

- Demonstrating that this rule is effective will be important to the overall credibility of the agency, and to the broader impact of SB 712. To that end, Ocean Conservancy would like to underscore that monitoring is critical to determining whether changes in water quality are the result of the implementation of Best Management Practices ('BMPs') by producers in a given watershed, or if the changes are attributable to some other factor (e.g. ecosystem factors, impacts from other business or industry)
- Additionally, participants that are voluntarily implementing BMPs will be interested to know whether and to what extent their stewardship is having a positive impact on the water resources of the state and of their region. Knowing that their good practices are contributing to improved water quality could serve as an additional motivating factor in future enrollment by additional participants in the program.
- Ocean Conservancy recommends that rulemaking clarifies the frequency and manner of monitoring that will be conducted, and how the agency will ensure sufficient capacity is dedicated to monitoring. If monitoring is to be done in collaboration or exclusively by the Florida Department of Environmental Protection, we urge that this be made clear in the rules.

#### **Site Visits: Notice and Frequency**

- Ocean Conservancy believes that two years between site visits is too long, and we recommend that the rules commit to conducting site visits annually. The rules should be explicit in directing that producers will be notified of their annual site visit 10 days before a visit is to occur – it is fair that participants subjected to a more frequent site visit should be given notice.
- We believe that increasing the frequency of site visits to an annual basis will incentivize producers to implement BMPs with fewer potential lapses in compliance, resulting in a more impactful program. Frequent inspection will increase quality in implementation, and will thereby produce quality results for the state's water resources.

#### **Incentivize Producer Enrollment and Implementation**

- There is a unique opportunity on the table with this rulemaking to encourage producers to participate in the BMP program by offering successful participants greater visibility on the FDACS program website, enabling buyers of agricultural products to buy preferentially from enrolled producers. This would allow producers to showcase their participation and highlight the impacts that their actions have on ensuring clean Florida water, which is desirable from the conscious consumer perspective.
- In the same vein, the agency should also consider a certification label for enrolled producers that recognizes and rewards them for their stewardship in the marketplace. Following a successful verification site visit, the Agency could certify producers for their compliance with the BMP manual, and in turn producers can use that distinction when they market their products to buyers interested in sustainable products.

- Similar programs exist, such as the “Fresh From Florida” mark for Floridian produce and is widely used by Floridian producers – a “Water Steward” mark for producers could boost participation in the program with the net result of positive impacts on Florida’s water resources.

Thank you for the opportunity to provide these comments, and I look forward to participating in the rulemaking process as it proceeds. Should you have any questions, comments, or concerns, please contact me directly.

Best regards,

A handwritten signature in black ink that reads "J. Brooker". The signature is written in a cursive, flowing style.

**Jon Paul “J.P.” Brooker, Esq.**

Director of Florida Conservation  
Ocean Conservancy

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