

**Fact Sheet to Accompany Press  
Release: FDE Sues U.S. Forest  
Service Over Rodman Dam's  
Special Use Permit**



**Why are FDE, Kaster and Little filing suit?**

Florida Defenders of the Environment, Bruce Kaster and Joe Little are suing the United States Forest Service to obtain an order to breach the Rodman Dam and restore the free-flowing Ocklawaha River.

While Bruce Kaster and Joe Little were the sole petitioners for the underlying Petition, FDE, in its organizational capacity, has joined these individuals in the filing of the Complaint. FDE has not made this decision lightly—the inaction by the Forest Service has left FDE with no other option following the Forest Service's perfunctory denial of a Petition for Rulemaking filed by FDE members Bruce Kaster and Joe Little earlier this year. The underlying Petition sought to enforce the terms of Rodman Dam's Special Use Permit that has long since expired. Filing the underlying rulemaking petition was deemed necessary to move forward in a timely manner to ensure compliance with the National Forest Management Act.

**What is a Petition for Rulemaking?**

Federal agencies sometimes fail to develop regulations that are necessary to effect the duties and obligations of that agency as set forth by law. A petition for rulemaking is the mechanism by which individuals, public interest groups, and private enterprise can argue to compel changes in existing rules or new rules for an agency that are necessary to remedy failures of agencies to fulfill their duties and purposes as provided by law.

The legal authority for such a petition is contained in the Administrative Procedure Act, 5 U.S.C. §553(e), which states that, "Each agency shall give an interested person the right to petition for the issuance, amendment, or repeal of a rule."

## **Summary of the Petition for Rulemaking**

Two Florida attorneys, **Bruce Kaster** and **Joseph Little**, petitioned the Secretary of Agriculture and the Chief of the U.S. Forest Service to (1) issue and implement rules to enforce the terms of the special use permit issued by the Forest Service to the Florida Department of Environmental Protection, and (2) issue rules to redress the continuing failure of the Forest Service to manage the Ocala National Forest in a manner that furthers the desired future conditions, goals, and objectives of the Forest Plan for National Forests in Florida. Kaster is a practicing lawyer and a member of the Board of Trustees for Florida Defenders of the Environment (“FDE”). Little has been a member of FDE for nearly 50 years, and has served as a professor at the University of Florida Levin College of Law since 1967.

The petition was filed by Jane West Law, a public interest environmental and land-use law firm based in St. Augustine, FL.

With the support of Audubon Florida, long-time board member Marjorie Harris Carr established the Florida Defenders of the Environment in 1969 with the main objective of halting the construction of the Cross Florida Barge Canal. Carr had served as a member of the Board of Directors of Audubon Florida and its Board Chair. The deauthorization of the Cross Florida Barge Canal and the removal of the Rodman Dam (now called the Kirkpatrick Dam) and the restoration of the Ocklawaha River have been priority issues for Audubon Florida and the Florida Defenders of the Environment for nearly 50 years.

Following the deauthorization of the Canal by Congress in 1990, the U.S. Army Corps of Engineers transferred its land interests and structures in the Canal to the State of Florida in 1991. As a result, the State applied for, and was issued a special use permit by the Forest Service that allowed Kirkpatrick Dam and associated locks and other structures to occupy Ocala National Forest. The permit was issued in 1994 and expired in 1998, but was extended twice before ultimately expiring again in 2002. The extensions were provided to allow FDEP to adhere to the implementation schedule for partial restoration of the Ocklawaha River, which FDEP did not adhere to. Following the 2002 expiration, the Forest Service directed the FDEP to renew the permit in 2010 to allow for the coordinated maintenance of the Forest System Land affected by FDEP’s occupancy. To this day, the permit has not been renewed, and FDEP is occupying Ocala National Forest both without a permit and in conflict with the terms of the original permit.

The expired special use permit contains terms that mandate compensation for damage to natural resources on Forest Service land by the permit holder, terms that mandate removal of structures built on Forest Service land by the holder upon termination or expiration of the permit, and terms that mandate restoration of the land by the holder. The continued occupation of Ocala National

Forest has also amounted to continuing and damaging practices that run counter to the U.S. Forest Service Forest Plan for National Forests in Florida, which effects a violation of the National Forest Management Act.

### **Kirkpatrick Dam and Rodman Reservoir: At A Glance**

- Congress authorized the construction of the Cross Florida Barge Canal in 1942, which was originally designated as a 107-mile ship canal connecting Palatka, Florida on the St. Johns River to Yankeetown, Florida on the Gulf of Mexico, and included impounding the Ocklawaha River.
- Construction on the Canal began in 1964 and the Kirkpatrick Dam (*aka* Rodman Dam) on the Ocklawaha River was built in 1968, **creating the Rodman Reservoir.**
- On January 19, 1971, President Nixon ordered “a halt to further construction of the Cross Florida Barge Canal to prevent potentially serious environmental damages.” This order was issued a week before a Federal District Court issued a preliminary injunction enjoining further construction of the Canal, after one-third of the Canal’s structures were completed.
- The Canal was officially de-authorized by Congress in 1990, and the U.S. Army Corps of Engineers transferred their land interests and structures in the Canal to the State of Florida in 1991.
- Kirkpatrick Dam extends 7,200 feet, with approximately 2,800 feet occupying National Forest System Lands
- The creation of Rodman Reservoir destroyed **9,200 acres** of floodplain and forest, some of which is owned by the United States Forest Service.
- Rodman Reservoir inundates at least **20 springs**, and covers about 24 miles of the Ocklawaha River.
- Annual operating costs for Rodman Reservoir, Kirkpatrick Dam, and associated structures **exceed \$1,000,000.00.**
- The dam and associated structures **generate no hydroelectric power** and serve no productive purpose for the citizens of Florida aside from creation of an artificial bass fishing area, in a state with a boon of natural areas to pursue such activities.

### **Benefits of Removal of the Dam, and Restoration of the Ocklawaha River**

- Elimination of Rodman Reservoir would add an estimated **185 million gallons of water a day** to the Ocklawaha and St. Johns Rivers.
- The reservoir suppresses spring flow from **twenty inundated springs**, preventing about 150 million gallons of water a day from entering the Ocklawaha River.
- The 9,200-acre surface area of the reservoir leads to a loss of about 35 million gallons of water a day through evaporation.

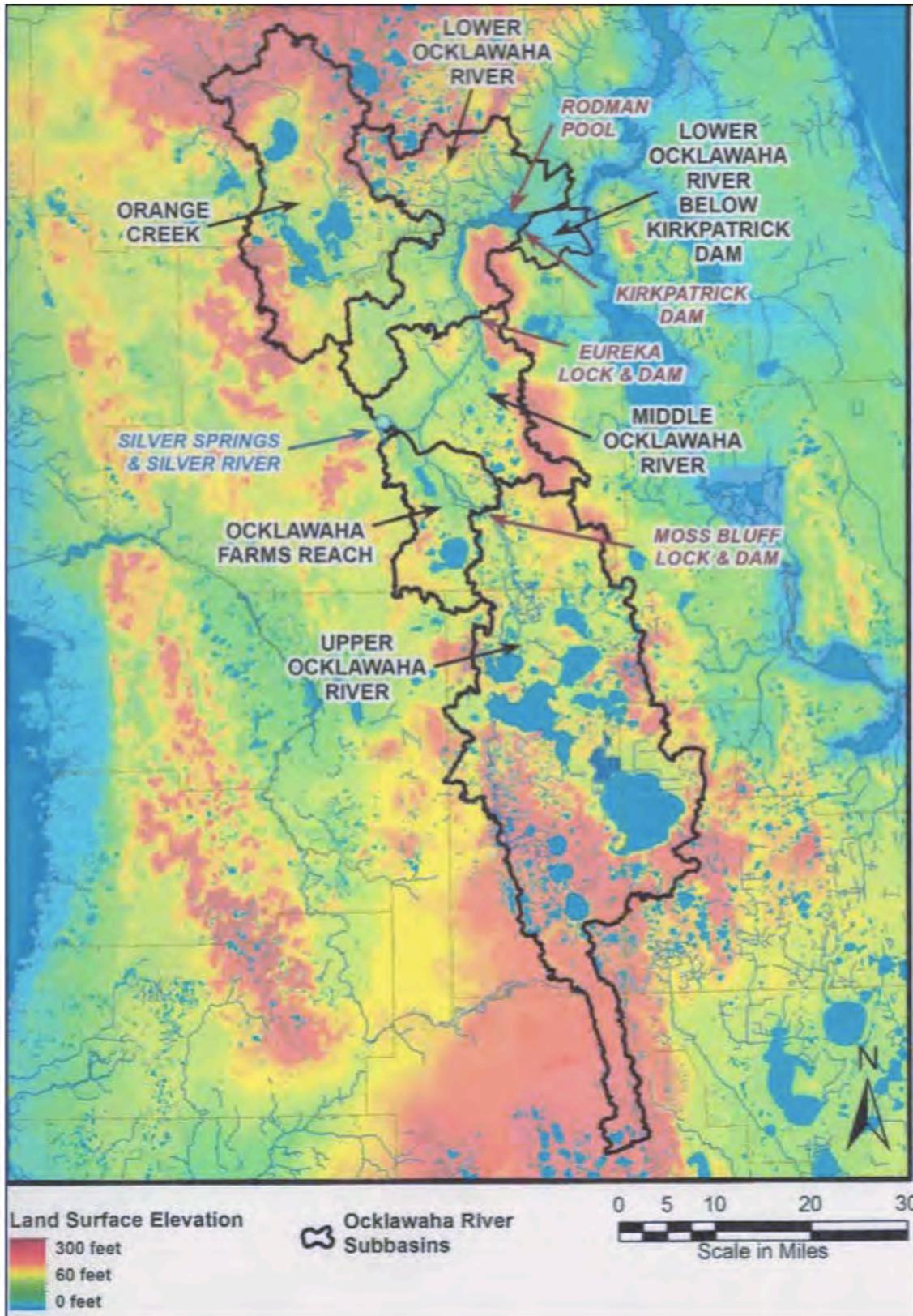
- **Removal of the dam would restore habitat and migration routes for fish and mammals, including:**
  - Restoration of a migration route for American eels, American shad, channel catfish, white catfish, Atlantic sturgeon, and endangered shortnose sturgeon;
  - Restoration of access by the Florida strain-striped bass to primary spawning habitat (the Ocklawaha and Silver Rivers).
  - Removal of threats to manatees which are currently blocked, injured and occasionally killed in the associated locks. Restoration would restore access of the manatees to the Ocklawaha River, Silver River, and Silver Springs, which are warm-water winter habitats for the animals.
- **Removal of the dam and associated structures would restore thousands of acres of damaged and inundated forested ecosystem, and add to the Marjorie Harris Carr Cross Florida Greenway—a popular recreational and environmental amenity.**

**Maps of the Subject Area** (Source: Putnam County Environmental Council, *Management and Restoration of the Fish Populations of Silver Springs and the Middle and Lower Ocklawaha River, Florida, USA* (Roy R. Lewis III, M.A., P.W.S., 2012).

(see following pages)



**Figure 2: Revised map of the subbasins of the Ocklawaha River.**



**About Bruce Kaster**

Bruce Kaster is a former U.S. Army Corps of Engineers officer and is a practicing lawyer based in Ocala, FL. He has a long history of environmental activism and has been a member of Florida Defenders of the Environment (“FDE”) for over thirty years. He is currently a member of the Board of Trustees for FDE. Kaster was appointed by Governor Lawton Chiles to the Ocklawaha Basin Board in 1983 where he served as Chairperson until 1987. Since that time, he has had special and unique concerns about the water management issues regarding the Ocklawaha River Basin, an area that he has been recreating on for decades.

### **About Joseph Little**

Joseph Little has been a member of FDE for nearly fifty years. Little has served as a professor at the University of Florida Levin College of Law since 1967, where he has instructed several generations of students in the fields of local government law, state and local taxation, federal and Florida constitutional law, worker’s compensation and employment legislation, administrative law, and others. He has also served as a visiting professor of law across the globe, including at the University of Auckland, Oxford University, the University of Peking, Monash University, and Stellenbosch University.

### **About Florida Defenders of the Environment**

FDE was founded in 1969, and is one of the oldest environmental non-profit organizations in Florida. FDE’s primary focus is the preservation, protection, and restoration of Florida’s freshwater resources, but over its long history, has expanded to include environmental education initiatives and the conservation of public lands. Initially organized for the purpose of addressing the threat posed to the Ocklawaha River by the Cross Florida Barge, FDE has continued to focus its efforts on repairing the damage caused by that project since the deauthorization of the Canal in 1990. FDE has also helped to protect the Osceola National Forest from mining, and has worked to improve the management of Ocala National forest and several state parks. Most notably, FDE played a key role in the designation of the Marjorie Harris Carr Cross Florida Greenway in honor of one of FDE’s founders, and a former client of Bruce Kaster.

### **About Jane West Law**

Jane West Law specializes in regulatory and litigation challenges involving environmental, land use, and real estate issues. The firm’s work ranges from comprehensive plan amendment and zoning challenges to litigation under federal environmental statutes such as NEPA, the Endangered Species Act, and the Clean Water Act. Jane West Law is a certified Green Law Firm by the Environmental & Land Use Section of the Florida Bar.