

December 8, 2009

Hon. Michael W. Sole  
FDEP Secretary  
3900 Commonwealth Boulevard  
MS 49  
Tallahassee, FL 32399

Re: Comments on the Florida Department of Environmental Protection's Draft Proposed Changes to Florida's Designated Uses and Surface Water Classification System

Dear Secretary Sole,

The City of Sanibel appreciates the opportunity to comment on the Florida Department of Environmental Protection's proposed changes to the Designated Uses and Surface Water Classification System. At this time, the City of Sanibel opposes the draft changes for the following reasons:

The proposed changes are premature since Florida does not have numeric nutrient criteria to support the proposed uses. Numeric criteria are critical for monitoring and enforcement of the water quality standards. If changes are needed to the existing classification system, they should only be made after numeric nutrient criteria are established as the basis for creating the designated use categories.

The proposed changes will shift the focus away from source control and move the burden of cleanup downstream, requiring the public to absorb monitoring and cleanup costs. Preventing pollution at the source is the most cost-effective way of reducing loading to downstream waterbodies. Shifting the focus away from source control will likely require large regional treatment systems or water control structures at the confluence points of waterbodies with differing designated uses (e.g. HU3/AL2 →HU4/AL3). Such facilities or water control structures could inhibit the natural movement of aquatic organisms into canals and creeks.

There is not a well-defined implementation plan on how downstream waterbodies will be adequately protected. One of the stated goals of the proposed changes is to free up resources that can be applied to downstream waters; however, there is not a clear plan on how this will work in practice. There are still a number of unanswered questions regarding situations in which a waterbody of a lower designated use empties into a receiving waterbody with a higher designated use. How will cumulative impacts be addressed? Who will be responsible for ensuring that the water meets the receiving waterbody's criteria? Who will pay for water quality monitoring at the confluence points? How will the standards be enforced? How will mixing zones be established and enforced? How will numeric nutrient criteria be implemented?

The proposed classification structure creates 'parking spaces' for waterbodies which do not currently have established criteria. For example, there are seven human use categories, four of which are less protective than current default class III standards. It was stated by FDEP staff in a meeting that the additional human use (HU) categories are necessary to address varying levels of bacteria that can limit human uses, but still allow the waterbody to be fishable. If this is the rationale, bacteriological thresholds should be established to support the new use categories prior to establishing a new framework. In situations where bacteria levels are found to be higher or dissolved oxygen concentrations are found to be lower as a result of a "natural condition," will nutrient levels be permitted to be increased above



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existing class III waterbodies or (HU3/AL2) for the proposed classification system if the designated uses are allowed to be changed to a lower use?

Changing the existing designated uses framework will impact progress already made towards TMDL implementation. State and local governments have already spent considerable time and resources developing TMDLs for impaired waterbodies throughout Florida. Mid-stream changes to designated uses could jeopardize local governments' long-term planning efforts and would likely result in delays in implementing Basin Management Action Plans (BMAP) due to designated use changes or rule challenges from affected parties.

The current proposal will create an exorbitant amount of work for FDEP staff to review changes, conduct public hearings, and establish site-specific criteria for each proposed use change. Will the Department have the resources available to ensure that this is done properly and that the numeric nutrient criteria established for each proposed use are monitored and enforced?

The existing Designated Uses and Surface Water Classification System already contains mechanisms for addressing unique waterbodies such as concrete lined ditches. Variances and Site Specific Alternative Criteria (SSAC), 62-302.800, FAC, could potentially be used as avenues for modifying water quality criteria of existing designated uses. If variances and SSAC are not appropriate, an alternative may be to create a subcategory to Class III waterbodies that would include these unique or alternative waterbodies. This would avoid having to completely transform the existing classification structure and would limit disruptions to the TMDL program.

Aquatic life (AL) use categories have been proposed as a mechanism for increasing protection of exceptional waterbodies, such as springs and coral reefs. These waterbodies could be given special protection under the existing system by designating them as Outstanding Florida Waters (OFW). OFWs are waterbodies that are "designated worthy of special protection because of its natural attributes". The overall goal of OFWs are to protect current water quality levels for the future.

Finally, any proposed changes to designated uses should contain an anti-degradation provision. This would require that any proposed designated use changes, whether in the existing system or in future proposals, would not permit water quality to deteriorate below existing levels.

We ask that you not proceed with rulemaking until numeric nutrient criteria have been set for estuaries, other better alternative approaches have been fully evaluated, and the above concerns have been sufficiently addressed.

We thank you for the opportunity to comment on the proposed rule changes and appreciate your time and attention to this matter.

Sincerely,

Mick Denham, Mayor  
City of Sanibel

CC:

Mr. Eric Shaw, FDEP -Delivered via Electronic Mail [Eric.Shaw@dep.state.fl.us](mailto:Eric.Shaw@dep.state.fl.us)