



3333 Sanibel Captiva Road, Sanibel Island Florida 33957
Telephone 239.472.2329

December 10, 2009

Eric Shaw, Environmental Manager
Florida Department of Environmental Protection
Standards and Assessments Section
2600 Blairstone Road, MS 6511
Tallahassee, FL 32399-2400

RE: Proposed Changes to Florida's Designated Uses and Surface water Classification System

Dear Mr. Shaw:

This letter is written on behalf of the Sanibel Captiva Conservation Foundation to express our serious concern with the Florida Department of Environmental Protection's proposed changes to the states designated uses. SCCF staff have been engaged in meetings and discussions with the DEP PAC and staff since 2006 regarding this issue. In addition, we have hosted local meetings and calls with staff, local municipalities and stakeholders to discuss the implications of the proposed changes on our region's water bodies. Following all this effort we remain concerned that this complex issue remains very conceptual with a great deal of confusion and lack of specificity regarding the impact on water quality for our unique south Florida conditions. We therefore request that DEP withhold making any changes to the classification system until these issues and questions have been adequately addressed.

In particular we are concerned that the proposed classification system:

- Creates too many categories of lower, degraded water quality
- Will not adequately protect downstream water quality
- Deemphasizes the fundamental principle of source control and responsibility
- Shifts the responsibility and cost of cleanup from private sources to public taxpayers
- Compounds confusion about impact and treatment options in jurisdictional waters that are part of an MS4 conveyance.

Too Many Degraded Categories: The currently proposed classification system creates two new human use and four aquatic life use categories. Both of the newly proposed human use categories are not safe for human contact bringing the total number of human use categories that are **not safe for human contact to 4, or 57%**, of the total number of human uses. Of the four aquatic life uses three categories, or 75%, of the categories represent water quality that deviates from a healthy condition. Our concern is that adding so many categories of degraded uses, including categories that do not have water quality criteria associated with them is a formula for further erosion of our states water quality. As an alternative we suggest that the numeric nutrient criteria be implemented for existing

SCCF: Working to bring sound science to policy decisions.

classifications so that monitoring and enforcement can demonstrate existing conditions and site specific alternative criteria can be used to address outliers.

We also suggest and that any change needs to provide at least as many opportunities to increase protection of the state's most pristine and special waters as there are for downgrading water quality. We support the development of AL 1 for the protection of exceptional aquatic communities and believe this classification should be a target to be achieved by our states existing Outstanding Florida Waters and Aquatic Preserves in addition to preserving the unspoiled aquatic resources in the state to prevent their degradation. Additional protection of water quality for Outstanding Florida Waters and Aquatic Preserves that may not meet the higher standard could include a supplemental designation of Outstanding Resource Waters as an overlay on top of the class III recreational use and should correspond to stricter regulatory controls.

Protection of Downstream Water Quality: DEP insists that downstream water quality will have to be met even if upstream waters are downgraded. In south Florida where many of our upstream waters are today some form of agricultural ditch which directly connects to recreational downstream waters, it is not evident how this assurance of protection can be achieved. Discussions have indicated that "regional treatment systems" would be built at confluences but in cases where there is no physical barrier how would this even be feasible or enforceable? Would barriers need to be constructed? What is the alternative if downstream regional treatment systems do not achieve water quality standards suitable for downstream waters? Further, this kind of regional water quality treatment adds to the burden of local governments having to treat water polluted by others, thereby costing more, not less in precious public resources.

De-Emphasis on Source Control: DEP has stated that source controls have limited effectiveness and will likely fall short of needs to address downstream waters. DEP suggests that larger regional treatment systems are more economical. However, water degradation not addressed at the source contributes to cumulative degradation of downstream waters. Like growth management concurrency, water quality needs to be addressed along the gradient from source to outfall in order to achieve meaningful water quality improvement. In south Florida we have the additional problem of already impaired waters that needs to be cleaned up from their headwaters in order to improve or protect downstream uses. Creating new designated uses with lower water quality standards in upstream waters will only make it more difficult to reach swimmable/fishable standards in the downstream water bodies. There is no economically effective alternative to prevention and source control.

The City of Sanibel and Southwest Regional Planning Council have been leaders in addressing source control through the development of ordinances on stormwater, wastewater and fertilizer that target pollutants at their source. Without focusing on source control what are the alternatives when a regional system is unable to achieve downstream water quality standards?

Shifts Financial Responsibility: Creating new designated uses with lower water quality standards in upstream waters will shift the responsibility and the financial burden for treatment from the private sources to the public taxpayers and cause local municipalities to shoulder a greater share of the responsibility through NPDES, TMDL and BMAP initiatives.

MS4 Conveyances: In our region there are two examples of impaired jurisdictional waters that are managed as part of municipal MS4 systems. The County and City respectively have invested time and resources in these systems and the current proposal is not clear about the implications for these systems under the proposed classification system. These systems seem to be a gray area, similar perhaps to the Franklin Ditch in Tallahassee that need to be dealt with in a specific clarification between jurisdictional waters and MS4 systems. The current system provides a process of site specific alternative criteria that may be able to be used to address these anomalies without a wholesale dismissal of the current system.

Following through evaluation and discussion we are convinced that this complex issue remains very conceptual with a great deal of confusion and lack of specificity regarding the impact on water quality for our region and therefore we cannot support the current proposal. The proposed matrix creates too many categories of lower, degraded water quality, deemphasizes the fundamental principle of source control and responsibility which will result in less protective water quality regulation and will shift the responsibility and cost of cleanup from private sources to the public. We respectfully request that DEP withhold making any changes to the classification system until these issues and questions have been adequately addressed so that Florida can put forward a meaningful and effective method for protecting our beautiful states waters.

Thank you for your consideration of these comments.

Sincerely,



Rae Ann Wessel
SCCF Natural Resource Policy Director

cc: Michael Sole, Secretary DEP
Jim Giattina, EPA