

Hopping Green & Sams

Attorneys and Counselors

February 10, 2017

Julie Espy, Administrator
Watershed Assessment Program
2600 Blair Stone Road – Mail Station 3555
Tallahassee, Florida 32399-2400

Dear Ms. Espy:

The Niceville-Valparaiso Regional Sewer Board (NVRSB or Board) submits this correspondence and accompanying materials in support of its request that the Department place Rocky Bayou (WBID 722) into assessment category 4e in lieu of assessment category 5 as included in the Order entered October 21, 2016, adopting the Revised Verified List of Impaired Waters for the Group 3 Basins.

The Order as executed by (then) Secretary Jon Steverson listed WBID 722, Rocky Bayou, as impaired for nutrients (assessment category 5) based on the annual geometric mean (AGM) for total nitrogen (TN) exceeding the applicable ambient criterion of 0.33 mg/L more than once in the most recent three year period. The NVRSB had information suggesting Rocky Bayou was not impaired based upon data collected by consultants acting on behalf of the Board. Notwithstanding the data relied upon by the Department, suggesting that Rocky Bayou was impaired, floral and faunal metrics appeared to indicate that nutrients, including TN, were not resulting in measurable impairment and that the applicable TN threshold (0.33 mg/L) may not be appropriate for the waterbody.

To ensure sufficient time to share its concerns with the Department, the NVRSB requested an extension of the deadline for the filing of a petition to challenge the listing of WBID 722, Rocky Bayou. The Department granted the request on November 17, 2016, extending the date for filing a petition through and including February 7, 2017.

On January 18, 2017, representatives of the NVRSB and the Department met to discuss the listing. As the parties exchanged information and ideas as to how to address Rocky Bayou, the Department suggested that recent and ongoing efforts by the NVRSB to reduce TN loading to Rocky Bayou seemed to support placing WBID 722 in assessment category 4e (impaired, but recently completed or on-going restoration activities are underway to restore the designated uses of the waterbody) in lieu of assessment category 5 (water quality standards are not attained and a TMDL is required). The Department agreed to extend the deadline for filing a petition through and including June 20, 2017, and entered an order to that effect on January 24, 2017, in response to a second request for extension filed on behalf of the Board.

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Since 2012, a period closely approximating with the Group 3, Cycle 3 assessment period, the NVR SB has expended over 6 million dollars upgrading its treatment facility to dramatically reduce nitrogen loading to Rocky Bayou. Recent monitoring suggests a significant downward trend in nitrogen exiting the zone of discharge at the NVR SB sprayfield which should ultimately result in a reduction in ambient TN concentrations in Rocky Bayou.

While the NVR SB maintains its position that Rocky Bayou (WBID 722) should not be considered impaired for total nitrogen, and that the existing TN criterion for the bayou is may be unnecessarily low, the Board believes that its recent and ongoing efforts to reduce nitrogen loading to the bayou obviates the need for a TMDL and provides this correspondence and accompanying materials in support of placing WBID 722 in assessment category 4e.

The NVR SB appreciates the Department's willingness to meet with Board representatives to address its concerns as well as the exchange of information ideas with Department staff members. If the Department's assessment staff needs any additional technical information or clarification of any of the materials enclosed, please contact Glenn Stephens at GStephens@polyengineering.com.

Thank you again for your assistance.

Sincerely,



Winston K. Borkowski
On Behalf of, Niceville-Valparaiso Regional Sewer Board

Copy to:

Patrick Strong, President NVR SB
Glenn D. Stephens, P.E., POLYENGINEERING, Inc.
Russ Frydenborg, Frydenborg EcoLogic, LLC
Kenneth Hayman, Senior Assistant General Counsel, FDEP
Kevin O'Donnell, Watershed Assessment, FDEP