

Caloosahatchee Estuary Basin Management Action Plan (BMAP)

Webinar Summary

Wednesday, February 10, 2021

10:00 am – 11:24 am

Participants

Cassandra Armstrong, SFWMD
Christian Avila, SFWMD
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Sean Beaudet, DEP
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Lauren Campbell, DEP
Kristen Campos, SFWMD
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John Cassani, Calusa Water Keeper
Angela Chelette, FDACS
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Sara Davis, DEP
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Bill Eggers, Evans Properties
Rebecca Elliott, FDACS
Kate English, Pavese Law Firm
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Kim Fikoski, SFWMD
Sommer Foster, Johnson Prewitt
Marcy Frick, Tetra Tech
Terry Grandchamps, Lee County
Roxanne Groover, FOWA
Chris Guth, Federico and Associates
Ron Hamel, FGCU
Kenny Hayman, DEP
Maddy Hart, FDACS
Christian Harvey, Kimley Horn
Janet Hearn, ATM
Jennifer Hecker, CHNEPT
Dianne Hughes, Martin County
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Emily Johnson, SFWMD

Steven Kelly, FDOT
Judi Kennington-Korf, BWCD
Scott Knight, Wetlands Solutions
Lisa Kreiger, Lee County
Donald Lees, Citizen
Claudia Listopad, Applied Ecology
Mathew Logan, Charlotte County
Celeste Lyon, Wood
Debbie Madden, Gunster
Linda McCarthy, Lykes
Ximena Medina, North Star Consulting
Kevin O'Donnell, DEP
Stacey Ollis, SFWMD
Steffany Olson, SFWMD
Roland Ottolini, Lee County
Jon Perry, Janicki Environmental
Tommy Perry, Johnson Prewitt
Chris Pettit, FDACS
Jason Pim, Sharkinetics
Nicolas Pisarello, ATM
Jack Price, DEP
Irene Quincey, Pavese Law
Bernadette Rashford, Gulf Citrus
Gary Ritter, Florida Farm Bureau
Charlette Roman, SFWMD
Maria Romero, Lee County
Brianna Rossiter, DEP
Ted Saltos, DEP
Warren Schirado, Citizen
Mark Serrahn, Landon Companies
Brent Setchell, FDOT
Jerry Smith, Citizen
Sara Stevenson, FDOT
Mark Sunyak, Lee County
Danielle Taylor, SFWMD
Jennifer Thera, FDACS
Amy Thibault, Pavese Law
Richard Thompson, City of Fort Myers
Ansley Tilley, North Star Consulting
Andy Tilton, Johnson Engineering

Nikki Tinsley, Citizen
Ronald Visness, Citizen
Pam Wade, SFWMD
Kalina Warren, DEP

Nia Wellendorf, DEP
Benita Whalen, Dispersed H2O
Kaylene Wheeler, Hydro Solutions
Manuel Zamorano, SFWMD

The full webinar recording and supporting materials are posted to the Florida Department of Environmental Protection (DEP) file transfer protocol (FTP) site at http://publicfiles.dep.state.fl.us/DEAR/BMAP/Caloosahatchee/Meetings/2021_Feb_Annual_Meeting/.

Questions and Answers

Question on the Florida Department of Agriculture and Consumer Services (FDACS)

presentation: How many producers have selected the monitoring option?

Answer from Maddy Hart, FDACS: We have referred people that have not enrolled to DEP, and we are unaware of anyone who has chosen that option. DEP sets the rule for the monitoring option.

Answer from Bree Rossiter, DEP: There are no producers that have selected monitoring in the Caloosahatchee that I am aware of.

Question on the FDACS presentation: Are the agricultural entities not enrolled all being monitored by FDACS to ensure compliance in meeting water quality standards?

Answer from Maddy Hart, FDACS: We are aware that there are certain properties that have not been enrolled. We try and perform some of that outreach that I talked about on these entities. We have undertaken a very large-scale mailout program to contact people that are not enrolled in our program in these south Florida BMAPs. We have gotten a really great response. I think we got something like 2,000 enrollments from that process but that is ongoing. The state of the landscape in Florida is constantly changing so we can be aware of things but by the time we get there it might be something else or it might not be agriculture anymore. We are aware that people are not enrolled but we cannot give them that presumption of compliance if they are not enrolled in our program or doing the water quality monitoring per DEP.

Question on the FDACS presentation: Is there an ongoing quality control (monitoring) to demonstrate the best management practice (BMP) is meeting presumptive expectations?

Answer from Maddy Hart, FDACS: We do not monitor on every operation. We do have all our BMPs initially verified by DEP when our manuals are adopted. The idea of demonstrating the presumptive compliance is kind of wrapped up in that cooperative agencies framework that we have discussed in the past. We make sure the BMPs are being implemented, DEP initially verifies, and then we have our framework to come together at these check ins at five- or one-year intervals to check the monitoring data and make sure that things are occurring that benefits the watershed.

Question on the FDACS presentation: Are the small percentage not enrolled not responding at all?

Answer from Maddy Hart, FDACS: I do not know every single one but with our mail out program we try and get in contact with people multiple times. We have dedicated people in our staff that do this for most of their workload. We have transmitted people that have not responded to DEP for further remedial action.

Answer from Sara Davis, DEP: FDACS does the initial outreach through the letters and often field visits, and then they provide names to us. Our division has someone that also helps to explain that this is not a matter of option, you have to choose one of these things because you are in BMAP area. At that

point, a number of those producers do get enrolled. The ones that do not, we can go down the path of enforcement. I do not handle that but there are a lot of things going on. I cannot tell you where we are specifically on whether people are starting to develop their monitoring plans or if we are starting down the enforcement path for anyone specifically. We have been working on a lot of names in the last couple of years, specifically in this area, and getting more people enrolled and making sure they understand their obligation under the statute.

Question on the FDACS presentation: Have any agricultural operations adopted the water quality monitoring option the South Florida Water Management District (SFWMD) spends so much time discussing? If not could it be that presumed compliance associated with enrolling with the state's BMP program creates ambiguous accountability and ultimately less BMAP compliance?

Answer from Maddy Hart, FDACS: We have submitted people who have not enrolled to DEP. Bree and Sara confirmed that no one has enrolled in the water quality monitoring option that we have awareness of at this time. We are following our mandate through the legislature and through statute and how our program is set out based on the law in the state of Florida. The law says if you are enrolled in our program and, now, if you have been undertaking your implementation verification visit, that you are given a presumption of compliance with water quality standards.

Question on the FDACS presentation: Do we have real-world data that confirms that nutrient loading from agricultural areas are going down?

Answer from Sara Davis, DEP: What we use in the BMAP was based on some real world studies for the different types of commodities and the typical reductions that are expected for nitrogen and phosphorus based on the suite of owner-implemented BMPs that were studied back then. I know that there are several places where there is some good research going on and there is real world monitoring happening with the different types of BMPs at a smaller scale. There are some data, the SFWMD has a lot of monitoring in this area as well as other entities, and we can kind of look at collectively what is happening in an area. If there are a lot of agricultural lands, we can see if we are noticing any changes in the data. This is something that Bree is going to talk a little bit about later is the monitoring and we will see some of the results from the targeted restoration areas. We do look at it a couple of different ways.

Answer from Maddy Hart, FDACS: The research and the studies that we used for some of the initial verification of these BMPs were conducted in this basin and the Lake Okeechobee basin so they are representative of the lands in this area.

Question on the FDACS presentation: If they do not enroll voluntarily in BMP program, they are not required to enroll in monitoring? They can just opt out altogether from doing anything?

Answer from Maddy Hart, FDACS: No, if a producer that is located within a BMAP does not enroll in our program, we exhaust all of our options to get in contact with them and give them the options, like Sara mentioned. Then, when they do not respond to us or they refuse to enroll, we give their information to DEP and they complete the compliance and enforcement process per statute. If you are located within a BMAP, you cannot opt out all together from doing anything. You have to choose one of the two options.

Question on the FDACS presentation: How does FDACS determine if an operator is implementing the BMP on their property as outlined in the BMP manual to ensure effectiveness?

Answer from Maddy Hart, FDACS: That is the main idea behind our implementation verification program. At least every two years, a field staff representative will go out to an enrolled operation and

they will go through their BMPs with them. They will have to see that they are using the proper equipment and practices relating to the manual that they are enrolled in. Then we collect information from that visit, such as the nutrient data, and we transmit that back to DEP.

Question on the FDACS presentation: Is not the implementation verification process part of the quality assurance/quality control (QA/QC) follow up?

Answer from Maddy Hart, FDACS: Yes. [See response to above comment.]

Question on the FDACS presentation: Are non-enrolled entities distributed throughout the full basin or concentrated in a particular sub-basin or land use type?

Answer from Maddy Hart, FDACS: I do not have a map in front of me of the unenrolled properties but they are distributed throughout the whole BMAP. There is a bigger concentration of them in the East and West Caloosahatchee subwatersheds as the tidal is becoming more and more urban over time.

Answer from Sara Davis, DEP: Just a reminder that this is described in the BMAP report from last year. If you look at the appendix, it breaks down the lands that are not enrolled and how many acres are in different areas. FDACS did some good summaries back then. I am sure it has changed a little bit in the last year but that is a good characterization if you are interested in it.

Answer from Maddy Hart, FDACS: There will be an update to that in our report to the legislature this year.

Question on the FDACS presentation: What does DEP do to enforce against entities not enrolling in either BMP program or in monitoring program?

Answer from Sara Davis, DEP: My job is not enforcement so I do not want to misspeak but, essentially, as I mentioned before, we get information from FDACS about landowners that are not enrolled. Our initial effort is to get them enrolled, as well. Sometimes it is just a matter that they do not understand that it is a requirement that they either enroll or monitor, so we have to help explain that a little bit more. If they refuse to do either one, then we do have path that is set out in our rules to go to enforcement. There are a bunch of different steps where you have to do all these formal things that the lawyers do. There are various penalties and things that can be applied if people do not come into compliance. If you are interested in more than that, I can get you into contact with people who actually do that and can give you more details.

Question on the FDACS presentation: Is it possible to get a copy of the criteria to implement the water quality monitoring program?

Answer from Maddy Hart, FDACS: The criteria for the water quality monitoring program is adopted by rule at DEP and that is Chapter 62-307, Florida Administrative Code, and also will be included in the soon to be updated Chapter 40E-61 rule that is adopted by SFWMD.

Question on the FDACS presentation: Could you comment on the water quality improvement expected from various agricultural BMPs? For example, when they are verified by DEP, is there a threshold of water quality improvement (perhaps a percentage) that needs to be met for any given BMP?

Answer from Maddy Hart, FDACS: No, there is not a threshold that needs to be met but there is usually a percentage associated with different practices and other beyond BMP type practices. We do not perform monitoring at every operation that is enrolled, so it is more of a range and they are estimates that we work on through research and with our agency partners.

Answer from Sara Davis, DEP: Our verification is really whether the BMPs will help improve water quality; it is not a threshold. The numbers we are using for the BMAP are from a separate study that was specifically in the Caloosahatchee, Lake Okeechobee, and St. Lucie watersheds.

Question on the FDACS presentation: Can a future BMAP meeting include DEP staff to answer questions pertaining to their areas of BMP implementation compliance? Can we have a data analysis at the next BMAP meeting to look specifically at agricultural loading rates to see if they are going up or down in certain areas, and how those areas relate to producers being enrolled in either a FDACS program or if they are not enrolled in either?

Answer from Sara Davis, DEP: It sounds like this is a request for our enforcement staff to come and answer questions about this. I can definitely talk to those staff and see if we can get them in attendance. We do have some data analysis planned. We can try to align that so that it happens with the next BMAP meeting. I am not sure though because we do not have a schedule yet for our BMAP meetings after this one. I will definitely try to work this request into our schedule.

Question on the FDACS presentation: Are there any instances where BMP verification has found BMPs were not implemented at the size or type to meet the FDACS BMP manual standards?

Answer from Maddy Hart, FDACS: I am not in our field staff but we do have a corrective action process that will be part of our rulemaking that we are currently undertaking. When we get onsite to do an implementation verification, if our staff notices that something is not being implemented correctly, we give them what we call corrective measures. If they are not properly implementing those corrective measures, we can give remedial measures. Then, at that point, if the implementation is still not proper for the manual, we can turn that person over to DEP for enforcement action.

Questions on FDACS presentation: Who are the enforcement staff? Meaning what program do they work in?

Answer from Sara Davis DEP: We have in our division, the Division of Environmental Assessment and Restoration, one staff person who handles the administrative and recruitment end so all that initial stuff I was talking about. Since enforcement is a civil case, that is in our Office of General Counsel with all the attorneys in a different division. They are not in our division; we have program attorneys but we do not have all the enforcement attorneys.

Question on the SFWMD presentation: How is the vast C-43 reservoir land being factored into the BMAP/total maximum daily load (TMDL) currently? It is completely "clipped" out, but surely contains legacy nutrients from prior agricultural activity.

Answer from Sara Davis, DEP: We just clipped out the footprint of the actual reservoir itself because, in the allocation process, that initial land use before the construction started was some sort of agricultural land use that is not accurate anymore. We clipped that out, like you described, but because any of the water that will come out of the ultimate operation of the reservoir is going to have monitoring associated with it, I think the concern about any legacy nutrients or things that are there will all be addressed through the actual monitoring data and tracking those monitoring data.

Question on the SFWMD presentation: Can you outline what the proposed rulemaking decision might be at tomorrow's Governing Board meeting?

Answer from Elizabeth Caneja, SFWMD: The purpose of the overview today was just to give an overview of the projects and programs. We were not intending to talk about the rule today. All the

information pertaining to the rule is on our website. The draft rule text is included there. I believe the presentation for the Governing Board is on our website as well so you can get an idea of what will be presented tomorrow.

Question on the DEP presentation: Will all the data be provided in the updated report?

Answer from Marcy Frick, Tetra Tech: The BMAP document update is posted to the website and was adopted last February. These updates to the TRA evaluation will not be put into a report but we do have a detailed spreadsheet for anyone who is interested in seeing some of those additional details.

Question on the DEP presentation: How will DEP be strategic about addressing the insufficient data problem?

Answer from Marcy Frick, Tetra Tech: As I mentioned at the end, DEP is working with data providers to make sure that data are collected on a frequent enough basis that we will start having sufficient enough data in each basin at a representative station to update this evaluation moving forward. Some stations will take a little bit longer, especially the newer ones, because we are looking for data in five consecutive years so if they just started sampling, it will be a few years out before we can have enough data in those areas.

Question on the DEP presentation: Which basin increased and which basin decreased in priority?

Answer from Marcy Frick, Tetra Tech: As I mentioned on the total nitrogen (TN) results slide, Telegraph Creek was the one that increased in priority, which means that the water quality got worse. On the total phosphorus (TP) one, that was the Hancock/Yellow Fever where the priority went from 2 to 3, which means that water quality has improved.

Question on the DEP presentation: What is the source of nutrients in the Telegraph Creek basin since most of it is in preserved lands?

Answer from Marcy Frick, Tetra Tech: I do not have an answer for that. I am not sure if anyone else knows what might be going on in that basin.

Answer from Sara Davis, DEP: What Marcy presented with these results is just a newly completed analysis. Based on that change, that is something we will be looking into. We do not know yet but we will try to answer that question. If you have some ideas, definitely let us know.

Question on the DEP presentation: What additional monitoring is planned in the S-4 basin?

Answer from Bree Rossiter, DEP: I do not necessarily know that answer off the top of my head but I would be happy to follow up with whoever asked.

Question on the DEP presentation: Is there going to be source tracing to determine the source of water quality degradation?

Answer from Marcy Frick, Tetra Tech: For the TRA evaluation, we are using this to help prioritize where projects are needed. As part of that evaluation, we are not looking at doing more source tracking. I do know, and I think Liz covered this a little in her presentation, that SFWMD is trying to look into where water quality is not looking as good and what might be going on there.

Answer from Sara Davis, DEP: Some of the local stakeholders are looking at that. Lee County did a study in some of the areas of the county.

Answer from Anthony Betts, SFWMD: I wanted to highlight the basin assessments that are part of the protection plan. We have highlighted the West Caloosahatchee basin for our protection plan

assessments, and we are still developing the methodology, but the idea is to do some level of source tracking to identify the smaller areas and target projects or programs to those areas. We are still developing the methodology for that but it will address that on some level.

Question on the DEP presentation: What projects are envisioned for Telegraph Creek?

Answer from Marcy Frick, Tetra Tech: The BMAP does have project tables by subwatershed that note which basins are located in there. You can look at the BMAP to see what projects have been listed for Telegraph Creek.

Question on the DEP presentation: Will we be able to get onsite with that kind of monitoring instead of in downstream mixing zones?

Marcy Frick, Tetra Tech: For the TRA evaluation, we are trying to pick stations that are representative of the entire basin to get a feel for how water quality is tracking overall.

Answer from Anthony Betts, SFWMD: Access is always an issue for where we can locate monitoring stations. I do not have anything specific at the moment because we are still trying to identify where we want to have monitoring locations. Of course, we are always going to try to get good monitoring data but we have to balance with access, as well.

Question on the DEP presentation: Does increased prioritization provide additional funding for project implementation in that area?

Answer from Sara Davis, DEP: It is a factor when we are looking at some of the funding, especially for our TMDL funding. We do look at where those projects are located and are consulted about which areas of the BMAP are in the most need or highest priority. On that side of things, yes, but there are a lot of different pots of money for funding through DEP. Some of them consider different criteria or factors for awarding the funding to projects.