

MEETING SUMMARY
Lake Jesup BMAP Basin Working Group Meeting
July 30, 2009
9:30 AM – 11:30 AM
Sylvan Lake Park
Sanford, Florida

Attendees

Basin Working Group Members Present Danielle Marshall, Altamonte Springs Ed Torres, Casselberry Carol Johnson, FDACS Pat Muench, FDOT Robert King, Friends of Lake Jesup Bruce Paster, Lake Mary Chris Kintner (for John Peters), Longwood Tim Rogers, Maitland Rodney Lynn (for Lori Cunniff), Orange County Jim Hunt, Orlando Tom King (for Tony Segreto), Oviedo Gary Johnson, Seminole County Casey Fitzgerald, SJWRMD Don Marcotte (for Troy Attaway), Winter Park Kipton Lockcuff, Winter Springs BWG Members Not Present Cheryl Harrison-Lee, Eatonville Dennis David, FWC Tom George, Sanford Jeremiah Marek, Turnpike Enterprise	Other Attendees John Abendroth, FDEP Natalie Ayala, FDEP Mary Brabham, SJRWMD Kelly Brock, Casselberry Jerry Brooks, FDEP Tiffany Busby, Wildwood Consulting John Byrd, Orange County Crystal Cook, FDEP Gordon England, Stormwater Solutions Brian Fields, Winter Springs Mark Flomerfelt, Seminole County Jennifer Gihring, FDEP Migdalia Hernandez, Sanford Dan Homblette, Orange County Steve Lienhart, URS Regina Lovings-Morse, SJRWMD Kim Ornberg, Seminole County Marcy Policastro, Wildwood Consulting Robert Potts, E-Sciences Gary Smith, Orange County Health Dept. Joe Walter, PBS&J Meghan Widden, Seminole County DOH Tresa Woodward, State House D.38
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Opening Remarks

Tiffany Busby welcomed everyone to the Lake Jesup Basin Management Action Plan (BMAP) Basin Working Group (BWG) meeting. The Florida Department of Environmental Protection (FDEP) has been developing an allocation approach for the BMAP, and the allocation table will be presented to the BWG at this meeting. FDEP would like a recommendation from the BWG on the allocation approach.

Jerry Brooks introduced himself as the FDEP Director of the Division of Environmental Assessment and Restoration. This Division implements all aspects of the Total Maximum Daily Load (TMDL) program including listing of verified impaired waterbodies, development of TMDLs, and development of an action plan that is appropriate to meet the required reductions. The Division is also responsible for updating the state water quality standards, and this will be further discussed at the end of the meeting.

Mr. Brooks thought it was an appropriate time in the process to attend a meeting and express his appreciation for all the hard work this group has done so far. Mr. Brooks noted that there are complications and challenges at every level of the TMDL process: establishing when a waterbody is deemed to be impaired; identifying what level of reduction is needed to remediate the impairment; and gathering stakeholders in the watershed to compile what is known about the basin, reach agreement on the sources of pollutants, and determine the most effective way to achieve the reductions as a community. While the process is challenging because there is uncertainty at each of these steps, the communities must work together and compromise to move forward with a set of actions to restore the waterbody.

Casey Fitzgerald asked Mr. Brooks to put into perspective what Florida is doing with TMDLs relative to other states because Florida seems very progressive. Mr. Brooks responded that, in his opinion, Florida is defining the model for watershed management. There are other states that are focusing on one high profile watershed, such as Chesapeake Bay. However, he does not know of another state that has such a comprehensive program or a legislature that has said the state will determine TMDLs and define actions to meet those TMDLs.

Ms. Busby noted that at the last BWG meeting, the group formalized operating procedures that require at least 50% of the members or designated alternates be present for quorum. Ms. Busby conducted a roll call of the BWG members and determined that quorum was met.

Allocation Approach

Jennifer Gihring reviewed the allocation table. While the table looks simple, it was a long process to determine the numbers that are scientifically valid. There are four main tenants to the allocation. First, if an entity contributes to the loading, then they are an allocation partner. Second, reductions are in proportion to what each entity contributes. Joe Walter (PBS&J) worked with FDEP and the stakeholders to determine loading numbers. Although the TMDL includes both total nitrogen (TN) and total phosphorus (TP), the BMAP focuses on TP due to the extent of nitrogen-fixation in the lake. The TP loads include the nonpoint source contributions from stormwater and onsite treatment systems. Third, the allocations must be fair and equitable among the allocation entities. And, fourth, the allocation approach only focuses on controllable loads because the jurisdictions should not have to improve on nature or address loads from outside the basin.

Columns A through H in the table are the allocations and required reductions, which are the focus of this meeting. The remainder of the table is related to projects and will be discussed at the next BWG meeting. All of the allocation entities are listed in the table. Columns A and B are the allocations (each entity's contribution to the load); one column is the load from the TMDL and the other is from the BMAP. Technical staff reviewed the TMDL and made updates and corrections to the information that was included. The BMAP allocation was used as the starting point load for each entity. Water/wetland/conservation areas are included in the allocation; however, these areas are not assigned a required reduction. Column C is the required reduction for each entity based on the developed area and controllable loads in each jurisdiction. The total reduction in Column C is 8.9 metric tons (MT), which is the required reduction from the TMDL. During the BMAP process, noncontributing areas in the basin were identified and

were factored into the allocations. The St. Johns River Water Management District (SJRWMD) provided information on the noncontributing areas for use in the BMAP. The load associated with these areas were calculated for each entity and subtracted from the required reduction, since these areas do not contribute loads to Lake Jesup. However, this also means that any projects identified in these areas were not eligible for credit. Column E shows the total required reduction, with the noncontributing areas load taken out.

Ms. Gihring noted that some other BMAPs required projects to meet all of the required reductions; however, for the Lake Jesup BMAP, the reductions are split into three parts over 15 years. This phased approach allows time to address unknowns in the basin, such as nitrogen-fixation and sediment flux, where insufficient information exists to incorporate these factors into the allocations. Splitting the required reduction gives each entity a requirement that must be achieved in the next five years while allowing time to address the unknowns. At this time, it is uncertain how the future allocations will change once additional information is incorporated. One of the main issues is attenuation and the technical stakeholders had a lot of discussions on whether data are available to determine attenuation throughout the watershed. As part of this phased approach, information on attenuation will be collected in the next five years to revise the allocations in the future. For this first iteration of the BMAP, each entity has to meet the first third of their reductions (highlighted in the allocation table).

Kim Ornberg asked if all the unknowns would be discussed in the BMAP. Ms. Gihring responded that the BMAP will discuss the unknowns, research studies to address the unknowns, and the timeline of these studies. Mr. Lynn asked, in these times of economic uncertainty, what will happen if an entity does not meet their required reduction. Mr. Brooks responded that FDEP has not yet engaged in any enforcement activities related to BMAPs so he is unsure. The municipal separate storm sewer system (MS4) legislation is very clear that if there is an established reduction then the associated requirements are to be placed in the permit. The actions could be subject to enforcement through that process. Mr. Brooks noted that he has not had any experience with FDEP enforcement on a BMAP probably because there are currently few adopted BMAPs. He understands that times are difficult and what the group agrees needs to be done may not be possible, but that will be evaluated at that time. Ms. Busby added that all the MS4s are Phase I in this basin and FDEP does have the option for enforcement because implementing the BMAP is becomes a regulatory requirement of the MS4 permits.

Robert King stated that not much has to happen in the next five years until 2014, so this will be an important year for the BMAP. The end of the next five year period in 2019 will also be important. It does not appear from Column N that much is happening until 2014. Ms. Gihring responded that the project reductions are shown in Columns I through L for projects that were in the TMDL, completed or funded, planned, and Interagency Plan participation. Column N only shows the reductions remaining for those entities that have not provided an adequate project list.

Don Marcotte stated that he did some quick calculations between Columns B and C and it looks like each entity has about a 66% reduction, although it varies. Ms. Gihring responded that the reduction for each entity is proportional to the entity's starting load, not the same percentage reduction. The percentage from the TMDL was not directly applied because that would not have

been fair and equitable. The FTP site has the Excel version of the allocation table for anyone who wants to see the calculations.

Ms. Busby stated that FDEP would like a recommendation from the BWG that the allocation portion of the table (Columns A through H) is a fair and equitable approach for this first phase of the BMAP. There will be opportunities in the next cycle to adjust the allocations based on new information.

Danielle Marshall asked if the BWG accepts this approach if the numbers would no longer change. Ms. Gihring responded that FDEP would like a recommendation on the concept, approach, and numbers for the first five years. The numbers can then be reevaluated after the first five years.

Ed Torres stated that he knows that this is not easy and that staff have worked hard on the allocation approach. However, based on the questions that have come up today it feels like the BWG is blindfolded and asked to adopt a methodology that is fair and equitable based only on information currently available. There are a lot of big issues that could have addressed but were set aside. This basin is made up of urban areas with highly educated people and the entities have been putting in stormwater systems for awhile and private developments are also required to have stormwater treatment. While these efforts are enough to meet the first five year reductions, there is still a lot more to do. The City of Casselberry has one of the highest stormwater utility rates in the area. The technology does not exist to remove TP cost effectively in an urban area. It would be better to spend the money on a project in the lake to clean up the TP there. Ms. Gihring responded that SJRWMD did a study to estimate the load reductions if all the acreage in the basin were treated by standard stormwater best management practices (BMPs). Standard BMPs were not sufficient, which is what led to the development of interagency regional projects. SJRWMD is looking at the feasibility and estimated load reductions from these projects, but the initial estimates indicate they should be enough to achieve the TMDL. These projects will be discussed in detail at the next BWG meeting.

Ms. Ornberg stated that the results of the research studies on what is happening in the lake and what is coming into the lake from groundwater may show that these are the main sources of TP. She asked if FDEP would then be open to giving credit to in lake projects. Ms. Gihring responded that if the information is available, then the BMAP can focus on those sources in future iterations. If information on the lake processes were available three years ago for the TMDL, this would have been a different BMAP. Mr. Fitzgerald added that a lot of the fertilizer sold in stores is now zero phosphorus, which will help. Mr. Torres noted that several entities are working together to remove the reclaimed water loads from Site 10, which will result in a significant load removal.

Mr. Marcotte asked if the future allocations will be modified with real data. Ms. Gihring responded that this will occur and the biggest change will be to factor in attenuation, which is a key part of the monitoring plan.

Ms. Busby outlined the BWG consensus approach and a vote was called. The results were:

- Support – Friends of Lake Jesup.

- Agree – Florida Department of Transportation (FDOT), Longwood, Orlando, Winter Springs, Florida Department of Agriculture and Consumer Services (FDACS), Orange County, SJRWMD, and FDEP.
- Accept – Seminole County, Casselberry, Maitland, Altamonte Springs, Winter Park, and Oviedo.
- Not accept – Lake Mary.

Bruce Paster stated that Lake Mary's fundamental issue with this approach is the unknowns, mainly attenuation, which would be a major factor for the city. The wetlands within the city boundaries treat loads from the city and upstream and Lake Mary is not comfortable with the decision to not include attenuation. If there was information about attenuation incorporated in the next five years (before the next iteration) that would allow Lake Mary adequate time to determine what additional projects, if any, need to be implemented, that would be acceptable. Lake Mary does not believe that even the first one third of the required reductions is representative of what they would need to do if attenuation were included. From the monitoring they have done for Soldier's Creek, the load generated in the city does not leave the wetlands to make it to Lake Jesup.

Ms. Busby noted that consensus is achieved when all the BWG members can support, agree, or accept; therefore, the group does not have consensus. Mr. Brooks asked if the group agrees that Lake Mary does not contribute to Lake Jesup. Mr. Torres stated that this is related to the bigger issue of attenuation in the basin, which will be documented through the monitoring plan. Ms. Gihring noted that when the attenuation issue was raised several years ago, FDEP looked at any available data but there was not information for the entire basin. Mr. Paster stated that Lake Mary has asked what information would be acceptable for monitoring. Ms. Gihring responded that this will be outlined in the monitoring plan.

Mr. Brooks suggested adding the following footnote to the allocation table: "Reductions subject to change as new information on the noncontributing areas, natural attenuation, and lake assimilation become available." The responsibility is on the entity to make a case that their first five year reductions are too high and need to be changed. Mr. King noted that the change could be either up or down, depending on what the monitoring shows.

Ms. Busby called another vote on the allocation approach with the footnote added to the first column. The results were:

- Support – FDEP and Friends of Lake Jesup.
- Agree – SJRWMD, Winter Springs, FDACS, Longwood, Orlando, FDOT, and Orange County.
- Accept – Seminole County, Casselberry, Lake Mary, Maitland, Altamonte Springs, Winter Park, and Oviedo.
- Not accept – none.

BMAP Project Eligibility and Calculations

Eligibility

Ms. Gihring stated that the project numbers included in the allocation table are based on the information provided by the entities. Mr. Walter met with most of the entities during the project

collection process to discuss the projects in detail. Credit was assigned to both structural and nonstructural efforts. Nonstructural credit includes public education, which was assigned up to a 6% reduction off the total allocation. Street sweeping was also given credit based on the best available information. Eric Livingston (FDEP) met with each of the entities to review the projects and determine eligibility. Eligible projects include the BMPs in the TMDL, BMPs implemented since 1996, and planned projects. Credit was assigned for future projects that provide treatment above and beyond permit requirements, because permit requirements maintain but do not improve current water quality.

Mr. Torres asked why credit would not be assigned for projects before 1996. Ms. Gihring responded that when preparing the BMAP, the data used in the TMDL must be considered. Benefits of projects implemented before the data period should be reflected in the water quality data. The TMDL set the current condition, which had to be used in the BMAP.

Ms. Gihring noted that project options also include regional projects, such as the Solary Canal partnership, Seminole County cooperative projects, and the Interagency Plan projects. Ms. Gihring asked the BWG and technical staff to review the project tables that were sent on Friday to verify the information. Column M includes those projects that appear to be pre-1996 and FDEP will need verification from those entities. Any applicable credit will be moved from that column to the project columns. Several entities still need to meet the remainder of their obligation and projects must be provided by August 28th. Mr. Walter will be providing maps to help each entity with their review. The BWG will meet again in September to discuss the project side of the allocation table.

Mr. Torres requested that the BWG also discuss funding options to meet the remaining ten year obligation at the next meeting. Mr. Lynn stated that Orange County will be sending a letter to FDEP on their remaining reductions before the next meeting.

Other Updates

Status of the BMAP Monitoring Plan

Ms. Gihring stated that the technical stakeholders began work on the monitoring plan but put it on hold until the project lists were completed. One of the objectives of the monitoring plan is to track project reductions. A conference call will be held on August 11th to discuss the monitoring plan and updated maps will be sent before the meeting for review. The goal will be to determine what resources are available to identify the monitoring network. The monitoring plan should also be drafted by the end of August.

Other Middle Basin Impairments and TMDLs

Ms. Gihring noted that a TMDL has been proposed for Lake Harney through Lake Monroe to the confluence with the Wekiva River. The public comment period has ended and Seminole County provided detailed comments. FDEP is reviewing the comments and updating the TMDL, where appropriate. FDEP has not determined yet if they will start this BMAP right away or wait to see the results from the Lake Jesup BMAP and project reductions.

Relationship of Quantitative Nutrient Criteria to TMDLs and BMAP

Mr. Brooks stated that the development of numeric nutrient criteria became an issue in 1998 and, since that time, Florida has had an extensive program to collect nutrient and biological data to understand the relationship between the two. Many stakeholders also contribute to the data and Florida has more data related to nutrient enrichment than the other states in the southeast combined. In January of this year, the U.S. Environmental Protection Agency (EPA) issued a formal notification that Florida needed to have numeric nutrient criteria to meet Clean Water Act requirements, including set deadlines. The current narrative criteria have made it difficult to make decisions on impaired waters and having numeric criteria will help.

The EPA determination triggers a time clock and if the state does not adopt criteria in time then EPA will have to promulgate the criteria. The deadline for streams, lakes, and other flowing waters is January 2010. FDEP has committed to working collaboratively with EPA so that the state can propose criteria and submit them to EPA for consideration and adoption. To meet this deadline, FDEP would have to bring the proposed rule to the Environmental Regulation Commission (ERC) in October 2009, which is an extremely ambitious rulemaking schedule. FDEP has had many public forums across state and are targeting this date. The process is challenging due to the variability from waterbody to waterbody and within a waterbody and EPA has raised questions about having fully documented scientific support for the rule. FDEP is trying to determine what additional information they can provide to EPA to meet this requirement.

As the nutrient criteria process evolved and people began to understand the impacts of the criteria, they started looking at the waterbody classifications. There are five classes and most waters are Class III. Criteria will be developed for each class and the pollutant levels cannot be exceeded to ensure the waterbody is fully protected. However, Class III waters include artificial waters, such as drainage ditches, canals, reservoirs, and phosphate pits, in addition to natural waterbodies. Having an obligation to meet the same criteria in a ditch as a flowing stream has a cost that is not reasonable and a true representation is needed of what artificial waterways should achieve. FDEP received a petition last week from the Florida Stormwater Association (FSA) to modify the classification system. This will be a separate process from the nutrient criteria but FDEP hopes to also bring this to the ERC in October.

Mr. Paster asked if the new criteria would change the requirements for wastewater treatment plant effluent. Mr. Brooks responded that the proposed criteria are below the levels associated with advance waste treatment (AWT). With the narrative nutrient criteria, mixing zones were not allowed. However, with the establishment of numeric criteria, there can be mixing zones for nutrients but FDEP will need to determine boundaries. Additional information on the nutrient criteria can be found on the FDEP website.

John Byrd noted that proposed Senate Bill 787 would give EPA jurisdiction over all waterbodies. Mr. Brooks stated that he would look into this proposed legislation.

Wrap Up and Adjourn

Ms. Busby asked if there were any dates to avoid for the next BWG meeting in September. The BWG stated that September 10, 11, 15, 16, 17, 18, 23, and 24 should be avoided.

Mr. Brooks thanked everyone for their involvement in the Lake Jesup BMAP.

The meeting was adjourned at 11:40 AM.

Action Items

- Jennifer Gihring will provide Lake Mary with guidance regarding a monitoring plan necessary to quantify attenuation.
- The BWG and technical staff should review the project tables to verify the information.
- Entities with loads in Column M (Casselberry, Lake Mary, and Orange County) will need to verify if these projects are pre-1996.
- Entities that have to meet the remainder of their obligation (Eatonville, Lake Mary, Longwood, and Orange County) must submit projects by August 28th. FDEP will contact each of these entities directly.
- Joe Walter will provide project maps to each entity.