

STATE OF FLORIDA  
DEPARTMENT OF ENVIRONMENTAL PROTECTION

In re:

CALOOSAHATCHEE RIVER AND ESTUARY  
BASIN MANAGEMENT ACTION PLAN

OGC Case No. 20-0041

FINAL ORDER ESTABLISHING THE CALOOSAHATCHEE RIVER  
AND ESTUARY BASIN MANAGEMENT ACTION PLAN

Pursuant to Sections 403.067(7) and 373.4595, Florida Statutes, this Final Order adopts the attached Basin Management Action Plan ("BMAP") for certain surface waterbodies within the Caloosahatchee River and Estuary basin. The adopted BMAP, entitled "Caloosahatchee River and Estuary Basin Management Action Plan" (hereafter referred to as the "Caloosahatchee River and Estuary BMAP") and dated January 2020, is attached hereto and incorporated herein as Exhibit 1.

The Caloosahatchee River and Estuary BMAP has been developed as part of the Florida Department of Environmental Protection's ("department") Total Maximum Daily Load ("TMDL") Program, as authorized under the Florida Watershed Restoration Act (Section 403.067, Florida Statutes) and the Northern Everglades and Estuaries Protection Program (Section 373.4595, Florida Statutes). The Caloosahatchee Estuary and portions of the Caloosahatchee River are designated as a Class III water in

accordance with Chapter 62-302, Florida Administrative Code ("F.A.C."), with the remainder of the Caloosahatchee River being designated as a Class I water. Water quality for Class III waters is meant to be suitable for recreational use and for the propagation and maintenance of a healthy, well-balanced population of fish and wildlife. Water quality for Class I waters is also meant to be suitable for potable water supply.

The Caloosahatchee River and Estuary watershed is located in Charlotte, Collier, Glades, Hendry, and Lee Counties. In 2009 and 2019, the department adopted Rule 62-304.800 F.A.C., establishing a nutrient TMDL for Caloosahatchee Estuary and dissolved oxygen TMDLs for various tributaries to the Caloosahatchee River. Excessive nutrients are the primary pollutants contributing to the impairment of these waters. Section 1.1.1 in the attached Exhibit 1 identifies the applicable TMDLs.

In November 2012, the department first adopted a BMAP to address the nutrient TMDL for the Caloosahatchee Estuary. This BMAP (Exhibit 1) supersedes and replaces in its entirety the BMAP previously adopted by the department to address that TMDL.

The department worked closely with the affected stakeholders, including local and state agencies, in

developing the Caloosahatchee River and Estuary BMAP to achieve the associated TMDLs. Beyond direct work with the affected stakeholders, the department encouraged public participation to the greatest practicable extent by providing routine updates in technical meetings and requests for comment at technical meetings on the Caloosahatchee River and Estuary BMAP. The department held a noticed public meeting in the basin on January 22, 2020, to discuss the BMAP and receive comments.

The Caloosahatchee River and Estuary BMAP represents the collaborative effort of stakeholders to identify current and planned management actions to achieve pollutant load reductions required by the TMDL. The adopted BMAP documents the projects and management actions that have been, or will be, undertaken by stakeholders to reduce discharge of pollutants in the watershed. The projects and management actions (completed, ongoing, and planned) identified in the BMAP address known sources of pollutants, facilitate investigation of unknown sources, prevent new sources, and address future loads associated with growth and land use changes in the basin.

The specific pollutant reduction projects and management actions required of individual entities are set forth in Chapters 2 and 3 of the BMAP. Unless otherwise

noted in the BMAP, all requirements of this BMAP are enforceable upon the effective date of this Order.

This Final Order and incorporated BMAP are enforceable pursuant to Sections 403.067, 403.121, 403.141, 403.161, 373.119 and 373.129, Florida Statutes.

THEREFORE, IT IS ORDERED that the attached Exhibit 1 is hereby adopted as the Caloosahatchee River and Estuary Basin Management Action Plan.

#### NOTICE OF RIGHTS

The Caloosahatchee River and Estuary Basin Management Action Plan shall become final unless a timely petition for an administrative proceeding is filed pursuant to the provisions of Sections 120.569 and 120.57 of the Florida Statutes, before the deadline for filing a petition. The procedures for petitioning for a hearing are set forth below.

A person whose substantial interests are affected by the department's proposed agency action may petition for an administrative proceeding (hearing) under Sections 120.569 and 120.57 of the Florida Statutes. The petition must contain the information set forth below and must be filed (received) in the department's Office of General Counsel,

3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000.

Petitions must be filed within 21 days of publication of the public notice or within 21 days of receipt of this order, whichever occurs first. Under Section 120.60(3), Florida Statutes, however, any person who asked the department for notice of agency action may file a petition within 21 days of receipt of such notice, regardless of the date of publication. The failure of any person to file a petition within the appropriate time period shall constitute a waiver of that person's right to request an administrative determination (hearing) under Sections 120.569 and 120.57 of the Florida Statutes, or to intervene in this proceeding and participate as a party to it. Any subsequent intervention (in a proceeding initiated by another party) will be only at the discretion of the presiding officer upon the filing of a motion in compliance with Rule 28-106.205, F.A.C.

A petition that disputes the material facts on which the department's action is based must contain the following information:

(a) The name and address of each agency affected and each agency's file or identification number, if known;

(b) The name, address, any e-mail address, any facsimile number, and telephone number of the petitioner, if the petitioner is not represented by an attorney or a qualified representative; the name, address, and telephone number of the petitioner's representative, if any, which shall be the address for service purposes during the course of the proceeding; and an explanation of how the petitioner's substantial interests will be affected by the agency determination;

(c) A statement of when and how the petitioner received notice of the agency decision;

(d) A statement of all disputed issues of material fact. If there are none, the petition must so indicate;

(e) A concise statement of the ultimate facts alleged, including the specific facts the petitioner contends warrant reversal or modification of the agency's proposed action;

(f) A statement of the specific rules or statutes the petitioner contends require reversal or modification of the agency's proposed action, including an explanation of how the alleged facts relate to the specific rules or statutes; and

(g) A statement of the relief sought by the petitioner, stating precisely the action petitioner wishes the agency to take with respect to the agency's proposed action.

A petition that does not dispute the material facts on which the department's action is based shall state that no such facts are in dispute and otherwise shall contain the same information as set forth above, as required by Rule 28-106.301, F.A.C.

Because the administrative hearing process is designed to formulate final agency action, the filing of a petition means that the department's final action may be different from the position taken by it in this order. Persons whose substantial interests will be affected by any such final decision of the department on the petition have the right to petition to become a party to the proceeding, in accordance with the requirements set forth above.

Mediation is not available for this proceeding.

A party who is adversely affected by this order has the right to seek judicial review under Section 120.68 of the Florida Statutes, by filing a notice of appeal under Rule 9.110 of the Florida Rules of Appellate Procedure with the clerk of the department in the Office of the General Counsel, Mail Station 35, 3900 Commonwealth Boulevard, Tallahassee, Florida, 32399-3000, and by filing a copy of the notice of appeal accompanied by the applicable filing fees with the appropriate district court of appeal. The

notice of appeal must be filed within thirty days after  
this order is filed with the clerk of the department.

DONE AND ORDERED this 31<sup>ST</sup> day of January 2020, in  
Tallahassee, Florida.

STATE OF FLORIDA DEPARTMENT  
OF ENVIRONMENTAL PROTECTION

  
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Noah Valenstein  
Secretary

Marjorie Stoneman Douglas Building  
3900 Commonwealth Boulevard  
Tallahassee, Florida 32399-3000

FILED ON THIS DATE PURSUANT TO § 120.52,  
FLORIDA STATUTES, WITH THE DESIGNATED  
DEPARTMENT CLERK, RECEIPT OF WHICH IS  
HEREBY ACKNOWLEDGED.

  
\_\_\_\_\_  
CLERK

2-3-2020  
\_\_\_\_\_  
DATE