

**Eric H. Livingston**  
**410 White Oak Drive**  
**Crawfordville, FL 32327**  
**Phone: 850.926.5310**  
**Cell phone: 850.508.5987**  
**Email: [stormwater.godfather@yahoo.com](mailto:stormwater.godfather@yahoo.com)**

## **COMMENTS ON DRAFT UPPER WAKULLA RIVER BMAP**

1. Please provide the Upper Wakulla River BMAP stakeholders with a written analysis of the Department's statutory legal authority to develop and attempt to adopt a BMAP that does not meet the requirements set forth in Section 403.067(7)(a). As proposed, the draft BMAP does not :
  - a. Establish a schedule for implementing management strategies with identified feasible funding that will ensure the strategy is implemented on schedule (403.067(7)(a)1.).
  - b. Equitably allocate pollutant load reductions to the identified categories of nonpoint sources of pollutant loading that are causing or contributing to the impairment of the Upper Wakulla River (403.067.(7)(a)2.). Since the entire required load reduction is assigned to the WLA, then the plan needs to equitably allocate the reductions among the sources of nonpoint source pollutant loading.
  - c. Ensure that new development will not increase the loading of nitrogen and nitrate. The plan does not contain a "no net increase in loading" objective nor include any accounting of new loads by those entities that allow new loadings (403.067.(7)(a)2.).
  - d. Ensure that the BMAP planning process has been performed in a manner that encourages the greatest amount of cooperation and consensus possible. For some reason, unlike the Silver Springs or Rainbow Springs BMAPS, the Department has attempted to rush through the BMAP process and has not responded to numerous requests from watershed stakeholders for additional information or scientific analyses that support statements made by Department staff (403.067.(7)(a)3.).
  - e. Include firm milestones for implementation of management strategies and water quality improvement (403.067.(7)(a)5.). Nearly all of the management strategies listed in the draft BMAP that would result in significant reductions of nitrogen have no firm schedule because they have no firm funding – they are simply wish list items. As a result, the draft BMAP not only will not lead to any new significant reductions in nitrogen loading during the next five years, but it will actually allow an increase in nitrogen loading from new sources.
2. Thank you for providing the document entitled "Sufficiency of Effort Process for the Upper Wakulla River and Wakulla Springs BMAP." From this document, it is clear that the Department is attempting to develop and adopt a BMAP without proper legal authority. Section 403.067(7), F.S., establishes clear requirements that must be included in a BMAP. There is no legal basis for a "Sufficiency of Effort" approach that the Department is using. Furthermore, state law clearly prohibits using "Incipient Agency Policy" when implementing programs or regulations. Finally, the paper does not include any clearly defined quantitative or qualitative evaluation factors for any of the point or nonpoint sources of pollutant loading. More importantly, the paper doesn't establish clearly defined "end points" that the Department staff use in making a determination that the submitted management strategies either do or do not meet the undefined "Sufficiency of Effort" standard. As a result, the

Department has abandoned one of the longstanding key basic principles in developing a BMAP. Namely, all aspects of the process and decision-making must be clearly defined and transparent in order to obtain watershed stakeholder buy-in and consensus.

3. Sadly, the Department has abandoned another basic principles for developing an effective BMAP that was established in 1994 with the passage of the TMDL implementation amendments to the Florida Watershed Restoration Act. Rather than seeking equitable abatement of the pollutant loadings from all contributing sources causing impairment, the Department has decided to sit back and wait to see if the benefits of the over \$250 million that Tallahassee residents have paid for their wastewater treatment plant improvements achieves the adopted TMDL. On pages x and 8 of the BMAP, staff have written "Further reductions in nitrate concentrations are expected in the river due to the completed actions" and alluded to the general declining trend in NO<sub>x</sub> as justification for this approach. However, the Department provided no statistical analysis of the probability that NO<sub>x</sub> levels will achieve 0.35 ppm nor acknowledged other actions that have occurred within the springshed that may have contributed to this trend. Furthermore, in its presentation in April, the Department contradicted its conclusion relating to this trend by stating "Unable to currently predict ability to meet the nitrate and biology targets in the next five years. Future growth and septic tank loads in the springshed need to be addressed." Therefore, the BMAP should require efforts by Leon County and Wakulla County to reduce their pollutant loadings in a manner equivalent to that which the City of Tallahassee has done and the BMAP needs to be much more vigorous in preventing new loadings from new development which includes the placement of any new OSTDS within the springshed.
4. The Department staff has stated that they have limited options with respect to reducing loadings from OSTDS. However, to the best of my knowledge, the Department has never sought a legal opinion from the Attorney General on whether the budget proviso language takes precedent over the requirements in Section 403.067(7)(a). Additionally, the language in Section 381.0065(4)(x) clearly allows local governments to require the use of passive engineer-designed PBTS. DEP, in cooperation with UCF, developed and tested two versions of passive nutrient removal OSTDS systems that achieve less than 10 mg/l and the DOH study has identified other system designs that engineers could use to meet this requirement. Therefore, both Leon and Wakulla Counties should immediately require these types of OSTDS for any new installations within the springshed as part of their management strategies until the long overdue DOAH study of passive nutrient reducing OSTDS is completed. Allowing traditional performance-based OSTDS is not sufficient since these systems seldom meet 10 mg/L as demonstrated by the FSU-DEP monitoring study of these units.
5. (Page 19) Please provide clarification of the inclusion of "In order to ...some stakeholders have expressed a need for the authority for local governments to address OSTDS loading." When establishing the TMDL and BMAP programs, Department managers and staff were very clear that the responsibility for reducing nonpoint sources, including stormwater and septic tanks, rests with the local government that approved the development.
6. (Section 1.5) The draft BMAP DOES NOT ensure that there will be no increase in nitrogen pollutant loading during the next five years. The BMAP does not include a "no net increase in nitrogen loading" objective nor does it require the local governments to track the loads resulting from their approval of new developments within the springshed. At a minimum, each local government must establish a tracking system for each new OSTDS, development, or redevelopment project that it approves that also includes an estimate of the resulting nitrogen pollutant loadings generated by these projects. Furthermore, these local

governments must include a management strategy for ensuring that these increased loadings are offset thereby resulting in a “no net increase in pollutant loading” as required by statute. The BMAP needs to include a table or modify the existing tables of management strategies to clearly identify those that are being used to ensure no net increase in pollutant loading.

7. (Page 40, Section 3.1.5.2) The local government entities listed below the first paragraph are NOT “nonpoint sources of pollution.” Nonpoint sources of pollution include agricultural runoff and leaching, forestry runoff and leaching, urban stormwater, OSTDS, etc. The list is of local government entities that may be responsible reducing nonpoint sources of pollution in their area.
8. (Section 4.2) The tables of “Stakeholder Management Strategies” do not meet the requirements set in 403.067(7)(a) and are incomplete. Many of the most significant projects that will reduce nitrogen loadings have no definitive start date, end date, source of funding, or estimated nitrogen load reductions.
9. (Section 4.1.1) The Department needs to include a table that lists all WWTFs within the BMAP area along with their permit number, permit expiration date, current pollutant loading and permit limits, method of disposal, etc.
10. (Section 4.1.1) How the Department staff has determined that the “wish list” of WWTF management strategies submitted by the various entities is adequate to meet BMAP requirements is beyond me! None of the major WWTF management strategies submitted by Leon County or Wakulla County have definitive funding sources, a start date, an end date, or an estimate of the anticipate load reductions. Such information is required by law.
11. (Section 4.1.3) The adoption of a Florida-friendly fertilizer ordinance is a good first step to addressing some of the impacts of landscape fertilization. However, each of the local government entities need to adopt the comprehensive Florida-friendly landscaping model ordinance since landscape design, not fertilizer use, is the major issue. In addition, DEP’s own BMAP guidance provides additional load reduction credits for adopting the more comprehensive approach.
12. (Section 4.1.5) The greatest reduction in stormwater loadings to the Wakulla Springs and River system will occur when the Department develops and adopts a BMAP for Lake Munson. Because of work that the City and Leon County have already done, the stormwater loads into Lake Munson can be addressed very easily and rather inexpensively by adding an alum injector at the inflow to the Lake Henrietta system and the routing the alum-treated stormwater through the adjacent wetlands to further remove nitrogen. Wakulla County needs to get its act together on stormwater. The county has never even begun the stormwater master planning requirements that they agreed to over 20 years ago in a legal settlement of their comprehensive plan with 1000 Friends of Florida.
13. (Section 4.1.5) With regard to stormwater, each of the local government in cooperation with the NFWFMD needs to ensure that every new development or redevelopment project within the Lake Munson watershed and the Wakulla Springs springshed/watershed meets the “net improvement” stormwater treatment standard set forth in Section 373.414, F.S., for new discharges to impaired waters. Furthermore, since the Legislature authorized the “10/2 self certification process” for any project with up to 10 acres of land and up to two acres of imperviousness, it is imperative that the local governments carefully review the stormwater

plans for such projects since the net improvement standard is not being met or enforced by either DEP or the NFWMD for these “10/2 self certifications.”

14. (Section 6.3) The proposed monitoring plan does not meet statutory requirements as it does not provide sufficient information “to evaluate whether reasonable progress in pollutant load reductions is being achieved over time.” Granted, since the BMAP does not require any major projects to reduce nitrogen, perhaps monitoring is not that important. But, the bottom line is that to determine whether management strategies are leading to reduced loadings and restoration of the health of the Wakulla River ecosystem is critical. The Department staff never provided any scientific analysis to demonstrate that semiannually biological monitoring was adequate to ascertain changes in the biological community. Staff also never responded to inquiries about how its proposed biological monitoring program could evaluate changes in the biological community associated with the periodic spraying of herbicides to kill hydrilla. Finally, the ultimate test of whether management strategies are working is changes in the nitrate concentrations coming from each of the vents and major tunnels. While the Department did agree to purchase and install one continuous nitrate monitoring sonde for one of the vents, this is not sufficient to meet the statutory monitoring goal and monitors are needed at each of the vents. The Department needs to take about \$1 million of the \$37 million that the Governor threw at ill-defined “Springs” projects with questionable nitrogen reduction benefits and use that money to buy continuous nitrate monitoring systems for Wakulla Springs, Silver Springs, and Rainbow Springs.
15. (Table 15) Wakulla County needs to add management strategies to address nitrogen loadings from new development. Specifically, they need to include strategies equivalent to Leon County strategies LC-11, LC-17, and LC-21 to promote Low Impact Development, including Florida-friendly landscaping. The County needs to revise their applications for funding from “Pot 2” of the RESTORE Act for its wastewater projects in WC-2 WC-3, and WC-7 so that they meet the funding selection criteria and have a better chance of selection for funding. They also need to make a commitment to use some of the county’s “Pot 1” RESTORE Act funding for these projects as matching funds. Project WC-24 needs to be removed from the Table since the current Wakulla County Board of Commissioners has repealed the county’s wetlands protection ordinance despite the county proclaiming to be “The Natural Place to Be,”
16. In conclusion, the draft BMAP is woefully inadequate, doesn’t meet statutory requirements, and will not result in any significant reduction in nitrogen loadings during the next five years. Because the draft BMAP is so inadequate with respect to preventing new loadings the BMAP likely will result in increased nitrogen loadings to Wakulla Springs and the Wakulla River. Sadly, the BMAP is not worth the paper that it has been printed on and its ultimate deposition will either be the recycling bin or the desk of an administrative law judge. As a person who was deeply involved in the writing of the 2004 TMDL implementation amendments to the Florida Watershed Restoration Act, it is very sad and disturbing to see the Department produce meaningless BMAPs that will not result in water quality improvements, especially for a water body that is one of the crown jewels of the Florida State Park system.