



Please reply to:

Tallahassee

October 17, 2013

Mr. Steve Cioccia
Watershed Planning and Coordination Section
Florida Department of Environmental Protection
2600 Blair Stone Road, MS 3565
Tallahassee, Florida 32399-2400
VIA ELECTRONIC MAIL: Stephen.Cioccia@dep.state.fl.us.

**Re: Draft Basin Management Action Plan for the Upper Wakulla River and Wakulla Springs
Basin**

Dear Mr. Cioccia:

We are writing to provide you with the comments of the Center for Earth Jurisprudence on the draft Basin Action Management Plan (the "Plan").

The mission of the Center for Earth Jurisprudence is to advance a legal system that recognizes that ecosystems such as Wakulla Springs and River, have an inherent right to exist and flourish. In the case of the springs, this means an ample supply of clean, pure water necessary to maintain a healthy ecosystem.

As a preliminary matter, the Center for Earth Jurisprudence does not wish to be listed as a "stakeholder" because we are concerned that such a listing might give readers the impression that our views were actually considered in the planning process. Unfortunately, the best that we can say is that our objections to the Department's continued failure to follow the statutory requirements of Section 403.067, particularly the requirement that the Plan make detailed allocations to nonpoint sources such as septic tanks, have been duly noted and dismissed, as they have been in other such proceedings.

Similarly, the opinions of other citizens who participate in DEP's public meetings usually to voice their concern over the ongoing degradation of our springs, rivers and lakes, are routinely

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given short shrift. While they may technically considered “stakeholders” everyone knows that the real stakeholders are those who are responsible for the pollution, and the general rule is that the bigger the polluter, the more important the “stakeholder” is in the eyes of the Department. Their “stake” is generally in avoiding or delaying the necessary clean-up. It is not surprising then that the process results in weak, unenforceable plans which postpone any effective action far into the future, usually on the flimsy excuse that more “research” is needed. Such is the case here.

Our concerns with the Plan remain those that were set out in our letter to you dated May 31, 2013. We will not repeat our argument that 403.067 requires that Plan make detailed allocations to nonpoint sources, other than to say that doing so would make the necessity of addressing the septic tank problem crystal clear. The Department acknowledges at page 35 of the draft that septic tanks “are now the largest source of nitrates to the ground water contributing more than one-third of the estimated loading.” If they are the largest source, why doesn’t the Plan require reductions in loading from septic tanks? Section 403.067(6)(b) requires that the initial and detailed allocations *shall be designed to attain the pollutant reductions* established pursuant to the total maximum daily loads proceeding. As we pointed out in our May 31st letter, the only realistic option for attaining the target reduction in the next five years is to eliminate 89% of the nitrogen coming from the 8,600 septic tanks in the spring protection zones which are projected to contribute 51,200 kg of nitrate pollution per year by 2018.

We also take issue with the statements at page x  that the phased implementation language contained in Paragraph 403.067(7)(a)1, Florida Statutes, somehow authorizes the Department to promulgate incremental plans which only address part of the required pollution reduction. The draft Plan basically proposes that the septic tank issue be deferred to the next planning process to begin five years from now. Once again, the Department is rewriting the statute to delay effective action. This is what paragraph 403.067(7) (a) 1 says:

... a plan must integrate the appropriate management strategies available to the state through existing water quality protection programs to achieve the total maximum daily loads and may provide for phased implementation of these management strategies to promote timely, cost-effective actions as provided for in s. 403.151.

Section 403.151 provides as follows:

All rules or orders of the department which require action to comply with standards adopted by it, or orders to comply with any provisions of this act, may specify a reasonable time for such compliance.

Thus, the Plan could provide for a phase-in of requirements that septic tanks meet certain standards. But that is not what the draft plan is proposing; it is not proposing a phased implementation of a management strategy for septic tanks, the draft does not even identify a management strategy for dealing with what it admits is “the largest source of nitrates.” The plan

is basically incomplete because it is not designed to achieve the required total maximum daily load reductions.

The Department attempts to justify its “wait-and-see” approach by suggesting that to do something about septic tanks now could result in nitrate reductions below the 0.35mg/L target and would be “over-protective” of the spring. It is hard to imagine anyone ever claiming that DEP and the water management districts have been “over-protective” of Florida’s once-beautiful springs, but it is worth pointing out that until the early 1970s, before the algal mats developed, nitrate levels in Wakulla Springs were only 0.2 mg/L. While the Department will doubtlessly assert otherwise, the 0.35 mg/L standard does not contain any margin of safety. A fair and unbiased review of the studies on which the 0.35 mg/L standard was based would lead to the conclusion that the weight of the scientific evidence was that nitrate levels would have to fall below 0.30 mg/L to reduce algal growth. In choosing 0.35mg/L as the standard, the Department adopted the highest number it could find based on an unpublished, non-peer-reviewed study. For once, the Department needs to consider erring on the side of protecting the spring rather than protecting the polluter.

In 2005, a workshop was held on the problems facing Wakulla Springs. The workshop was sponsored by 1000 Friends of Florida, Hydrogeology Consortium, Florida Department of Environmental Protection (FDEP), Florida Geological Survey (FGS), Florida Department of Health, Florida Department of Community Affairs, Hazlett-Kincaid, Inc., Northwest Florida Water Management District (NFWMD), city of Tallahassee (COT), and Leon and Wakulla Counties. Subsequently, a special peer review committee of scientists was convened to assess the state of Wakulla Springs and to recommend actions aimed at improving the spring basin and the upper reaches of the Wakulla River, focusing on nutrient loading.¹

The peer review committee found that nutrient loading from septic tanks was a “critical threat to the future ecological and recreational value of Wakulla Springs and River.” They strongly recommended the establishment of a waste water utility, charged with improving the operation of all onsite sewage treatment and disposal systems in the environmentally sensitive portions of the springshed. That was *eight* years ago. In the intervening years, other studies have reached the same conclusion. *See e.g.* the very thorough discussion in the 2011 Report by Lombardo Associates, Inc.² It seems very unlikely that a different result will emerge from the so-called “OSTDS Initiative” which is proposed in the draft Plan. The ‘Initiative’ seems largely designed to delay any action from being taken for another five years. This is unacceptable.

¹ See Degradation of Water Quality at Wakulla Springs, Florida: Assessment and Recommendations, Report of the Peer Review Committee on the Workshop, *Solving Water Pollution Problems in the Wakulla Springshed of North Florida*, December 2005, available online at http://www.dep.state.fl.us/geology/programs/hydrogeology/hydro_wkshp/WakullaPeerReportFinal.pdf.

² *Onsite Sewage Treatment and Disposal And Management Options – Final Report*, Lombardo Associates, 2011, available online at https://www.talgov.com/Uploads/Public/Documents/planning/pdf/compln/onsite_sewage_mgt_rpt.pdf

Wakulla Springs is one of the crown jewels of the Florida Park System. It is an Outstanding Florida Water. It has been designated a National Natural Landmark. It is one of the finest examples of an artesian spring in the world. Yet, increased nitrate levels resulting in algal blooms, have been allowed to degrade the spring and river ecosystems. A number of sensitive species have all but disappeared and others are in long term decline, It is long past time for the Department to take action. Now, not five years from now.

Sincerely

A handwritten signature in black ink, appearing to read "Robert A. Williams", with a stylized flourish at the end.

Robert A. Williams
Of Counsel

