

**STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

In re:

OGC Case No(s): 03-1497 through 03-1506
03-1511 and 03-1515

**2003 VERIFIED LIST OF NUTRIENT
IMPAIRED WATER SEGMENTS FOR
THE MAIN STEM OF THE LOWER
ST. JOHNS RIVER (A GROUP 2 BASIN).**

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**ORDER ADOPTING 2003 VERIFIED LIST OF: NUTRIENT IMPAIRED WATER
SEGMENTS FOR THE MAIN STEM OF THE LOWER ST. JOHNS RIVER
(A GROUP 2 BASIN)**

Pursuant to Section 403.067(4), Florida Statutes (Fla. Stat.), and Rule 62-303, Florida Administrative Code (F.A.C.), the Department of Environmental Protection (Department) adopts the verified list of nutrient impaired waters for the main stem of the Lower St. Johns River, for which Total Maximum Daily Loads (TMDLs) shall be established. The main stem of the Lower St. Johns River is that portion of the St. Johns River that flows between the mouth of the Ocklawaha River and the Atlantic Ocean, excluding all tributaries. This list has been adopted in advance of the remaining Group 2 Basin waters to accommodate a September 30, 2003, deadline for the establishment of a nutrient TMDL, for this portion of the river, imposed upon the United States Environmental Protection Agency (EPA). Other waters within the Lower St. Johns River Basin are being assessed separately as part of the Department's Watershed Management cycle. Lists addressing these other waters and addressing non-nutrient related impairment in the Lower St. Johns River shall be adopted later this year.

These lists will be combined with other adopted verified lists for the Group 2 basins (Group 2 basins include the Lower St. Johns River, the Middle St. Johns River, the Apalachicola/Chipola River, Charlotte Harbor, the major tributaries to Tampa Bay, and the St. Lucie/Loxahatchee Basins) scheduled for adoption in October, 2003. These

combined lists shall be submitted to the EPA as the Department's 2003 submission, pursuant to Section 303(d) of the federal Clean Water Act, and shall serve to amend the 1998 303(d) statewide list of Florida waters maintained by the EPA. The 1998 303(d) list was developed and submitted to the EPA prior to the State's adoption of Section 403.067, Fla. Stat., allowing the Department to develop its TMDL program, and prior to the Department having adopted, by rule, a methodology for the identification of impaired waters.

To transition between the 1998 pre-rule 303(d) list and development of verified lists of impaired waters, applying Chapter 62-303, Identification of Impaired Surface Waters, the Department's Group 2 verified list shall serve to amend the 1998 303(d) list for those Group 2 basin waters for which sufficient data exists to be assessed. The 1998 303(d) list shall remain unchanged, but for the Group 1 and Group 2 basin waters, until such time as the Department completes its assessment of waters on the 1998 303(d) list and basin specific verified lists for Groups 3 through 5, applying the Department's five-year, five-phase rotating basin cycle. Nothing herein shall alter or amend the Department's interpretation and application of the 1998 303(d) list as a list which may not be used for the administration or implementation of any regulatory program pursuant to Section 403.067(2), Fla. Stat.

The Department's TMDL program is authorized as part of the Florida Watershed Restoration Act codified in Section 403.067, Fla. Stat. The Department implements the Act applying a watershed management approach. Applying this approach, the State's surface waters have been organized into 52 basins, which have been organized into 30 groups. The 30 groups have been further divided into five groups of six sets for the purpose of applying the Department's five-year rotating basin cycle. Each group of six basins is given a number which corresponds to the year in an initial five year basin rotation cycle during which assessment of waters will begin in those basins for each

group. Assessment of Group 1 basins began in July 2000, assessment of Group 2 basins began in July 2001, assessment of Group 3 basins began in July 2002, assessment of Group 4 began in July 2003, and assessment of Group 5 basins will begin in July 2004. At the end of each five year five phase cycle, for each group, a new five year five phase cycle begins.

Each year of each five year cycle represents a different phase of the basin rotation cycle which include: Initial Basin Assessment; Strategic Monitoring; Data Analysis and TMDL Development; Basin Management Action Plan Development; and, Basin Management Action Plan Implementation. A verified list of impaired waters shall be established at the end of Phase 2 for each of the five groups as follows: Group 1—2002; Group 2—2003; Group 3—2004; Group 4—2004, and Group 5—2006. These lists, once finalized, shall serve as the Department's lists as required for submission to the EPA under Section 303(d) of the federal Clean Water Act.

During the development of the Department's basin group specific verified lists, the Department shall assess all waters included on the 1998 303(d) list. Waters on the 1998 303(d) list shall remain on the EPA statewide impaired waters list for Florida until that list is ultimately replaced by the Department's basin specific verified lists of impaired waters as described herein above. This order adopts only a small subset of the Department's second of five basin specific verified lists, the Group 2 basins verified list.

This order only addresses the nutrient impairment of the main stem of the Lower St. Johns River, which has been assessed applying Chapter 62-303, F.A.C., verified as impaired and listed pursuant to Section 403.067(4), Fla. Stat. Water segments within the Lower St. Johns River verified as impaired by nutrients, applying Chapter 62-303, F.A.C., as authorized under Section 403.067, Fla. Stat., are set forth in Exhibit I. Exhibit 1 is attached hereto and incorporated herein, and is entitled, "Verified List of Nutrient Impaired Segments of the Main Stem of the Lower St. Johns River."

Requests For Hearings

Persons whose substantial interests are affected by this order have a right to petition for an administrative hearing to contest this order pursuant to Sections 120.569 and 120.57, Fla. Stat. 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, MS# 35, Tallahassee, Florida 32399-3000, within 21 days of the date of receipt of this order. Failure to file a petition within 21 days of the date of receipt of this order constitutes a waiver of any right such person has to an administrative hearing pursuant to Sections 120.569 and 120.57, Fla Stat.

Extensions of Time

The Department may, for good cause shown, grant a request for an extension of time for filing a petition. Requests for extension of time must be filed with the Department prior to the applicable deadline. Such requests for extensions of time shall contain a certificate that the moving party has consulted with all other parties, if any, concerning the extension and whether any other parties agree to the extension. A timely request for an extension of time shall toll the running of the time period for filing a petition until the request is acted upon.

Contesting A Water Body Or Water Segment Not Listed

A person whose substantial interests have been affected by the Department choosing not to include a water segment of the main stem of the Lower St. Johns River, for nutrients, on this verified list must file a petition as directed herein using OGC Case Number: 03-1515

Contesting The Listing Of A Water Segment

A person whose substantial interest have been affected by the Department's listing of a water segment on this verified list, for nutrients, must file a petition as directed herein using the OGC case number listed for that particular water segment.

Contents of Petition for Hearing

The petition shall contain the following information: (a) The name, address, and telephone number of each petitioner; the Department's identification number (OGC number) for the water segment and the county in which the subject matter or activity is located; (b) A statement of how and when each petitioner received notice of this order; (c) A statement of how each petitioner's substantial interests are affected by this order; (d) A statement of the material facts disputed by the petitioner, if any; (e) A statement of facts which the petitioner contends warrant reversal or modification of this order; (f) A statement of which rules or statutes the petitioner contends require reversal or modification of this order; (g) A statement of the relief sought by the petitioner, stating precisely the action petitioner wants the Department to take with respect to this order.

Intervention As Party to Proceedings

If a petition is filed, the administrative hearing process is designed to formulate final agency action. Accordingly, the Department's final action may be different from the position taken by it in this Notice. Persons whose substantial interests will be affected by any decision of the Department with regard to the subject order have the right to petition to become a party to the proceeding. The petition must conform to the requirements specified above and be filed (received) within 21 days of receipt of this order in the Office of General Counsel at the above address of the Department. Failure to petition within the allowed time frame constitutes a waiver of any right such person has to request a hearing under Sections 120.569 and 120.57, Florida Statutes, and to participate as a party to this proceeding. Any subsequent intervention will only be at the approval of the presiding officer upon motion filed pursuant to Rule 28-106.205, Florida Administrative Code.

Mediation

In addition to petitioning for an administrative hearing, any person who has previously filed a petition for an administrative hearing may pursue mediation. If a written mediation agreement with all parties to the proceeding (i.e., the petitioner, the Department, and any person who has filed a timely and sufficient petition for a hearing) is filed with the Department within 10 days after the deadline for filing a petition for an administrative hearing, the time limitations imposed by sections 120.569 and 120.57, Fla. Stat., shall be tolled to allow mediation to proceed. The agreement must be received by the clerk in the Office of General Counsel of the Department at 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000, before the deadline noted above. Pursuing mediation will not adversely affect the right to a hearing if mediation does not result in a settlement.

Agreement to Mediate

Mediation may only take place if the Department and all the parties to the proceeding agree that mediation is appropriate. A person may pursue mediation by reaching an agreement to mediate with all parties to the proceeding (which include the Respondent, the Department, and any person who has filed a timely and sufficient petition for a hearing) and by showing how the substantial interests of each mediating party are affected by this order. The agreement must be filed in (received by) the Office of General Counsel of the Department at 3900 Commonwealth Boulevard, MS #35, Tallahassee, Florida 32399-3000, within 10 days after the deadline as set forth above for the filing of a petition.

Contents of Agreement to Mediate

The agreement to mediate must include the following:

- (a) The names, addresses, and telephone numbers of any persons who may attend the mediation;

- (b) The name, address, and telephone number of the mediator selected by the parties, or a provision for selecting a mediator within a specified time;
- (c) The agreed allocation of the costs and fees associated with the mediation;
- (d) The agreement of the parties on the confidentiality of discussions and documents introduced during mediation;
- (e) The date, time, and place of the first mediation session, or a deadline for holding the first session, if no mediator has yet been chosen;
- (f) The name of each party's representative who shall have authority to settle or recommend settlement; and
- (g) Either an explanation of how the substantial interests of each mediating party will be affected by the action or proposed action addressed in this notice of intent or a statement clearly identifying the petition for hearing that each party has already filed, and incorporating it by reference.
- (h) The signatures of all parties or their authorized representatives.

Mediation Is Not A Waiver of Hearing

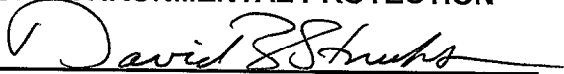
As provided in Section 120.573, Florida Statutes, the timely agreement of all parties to mediate will toll the time limitations imposed by Sections 120.569 and 120.57, Florida Statutes, for requesting and holding an administrative hearing. Unless otherwise agreed by the parties, the mediation must be concluded within sixty days of the execution of the agreement. If mediation results in settlement of the administrative dispute, the Department must enter a final order incorporating the agreement of the parties. Persons whose substantial interests will be affected by such a modified final decision of the Department have a right to petition for a hearing only in accordance with the requirements for such petitions set forth above, and must therefore file their petitions within 21 days of the date of this order. If mediation terminates without settlement of the dispute, the Department shall notify all parties in writing that the administrative hearing

procedures under Sections 120.569 and 120.57, Fla. Stat., remain available for disposition of the dispute. The notice will also specify the deadlines which will apply for challenging the agency action and electing remedies under those two statutes.

Judicial Review

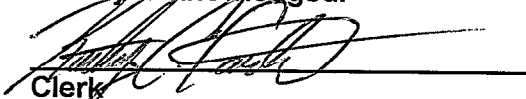
This order is final agency action. A party who is adversely affected by this order has the right to seek judicial review under Section 120.68, Fla. Stat., by filing a notice of appeal under Rule 9.110, Florida Rules of Appellate Procedure, with the clerk of the Department in the Office of the General 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.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION


David B. Struhs, Secretary

Marjory 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


Date

Exhibit 1. Verified List of Nutrient Impaired Segments of the Main Stem of the Lower St. Johns River

O&G Case Number	Waterbody Identification (WBID) Number	Waterbody Segment Name	Parameters Identified Using the Impaired Waters Rule	Concentrations Causing Impairment ¹	Priority for TMDL Dev. ²	Projected Year for TMDL Dev. ²	COMMENTS ³
03-1497	2213A	STJ RIV AB MOUTH	NUTRIENTS (HISTCHLA ⁴)	TN = 0.54 mg/L TP = 0.082 mg/L	LOW	2003	Nitrogen limiting based on median TN/TP of 6.7 (68 values) during the Verified Period (VP).
03-1498	2213B	STJ RIV AB ICWW	NUTRIENTS (HISTCHLA)	TN = 0.80 mg/L TP = 0.103 mg/L	MEDIUM	2003	Nitrogen limiting based on median TN/TP of 7.5 (701 values) during the VP.
03-1499	2213C	STJ RIV AB DAMES PT	NUTRIENTS (HISTCHLA)	TN = 0.94 mg/L TP = 0.118 mg/L	HIGH	2003	Nitrogen limitation based on median TN/TP of 7.6 (185 values) during the VP. Some seasonal co-limitation with phosphorus.
03-1500	2213E	STJ RIV AB WARREN BRG	NUTRIENTS (CHLA)	TN = 1.27 mg/L TP = 0.121 mg/L	HIGH	2003	Nitrogen limitation based on median TN/TP of 10.4 (1513 values) during the VP. Some seasonal co-limitation with phosphorus.
03-1501	2213F	STJ RIV AB PINEY PT	NUTRIENTS (CHLA)	TN = 1.10 mg/L TP = 0.100 mg/L	HIGH	2003	Co-limitation of nitrogen and phosphorus based on median TN/TP of 10.3 (166 values) during the VP.
03-1502	2213I	STJ RIV AB BLACK CK	NUTRIENTS (TSI)	TN = 1.32 mg/L TP = 0.086 mg/L	MEDIUM	2003	Nitrogen and Phosphorus co-limiting based on median TN/TP of 15.9 (1062 values) during the VP.
03-1503	2213J	STJ RIV AB PALMO CK	NUTRIENTS (TSI)	TN = 1.38 mg/L TP = 0.075 mg/L	MEDIUM	2003	Nitrogen and Phosphorus co-limiting based on median TN/TP of 18.3 (460 values) during the VP.
03-1504	2213K	STJ RIV AB TOCIO	NUTRIENTS (TSI)	TN = 1.39 mg/L TP = 0.075 mg/L	HIGH	2003	Co-limitation of nitrogen and phosphorus based on median TN/TP of 19.2 (870 values) during the VP.
03-1505	2213L	STJ RIV AB FEDERAL PT	NUTRIENTS (TSI)	TN = 1.32 mg/L TP = 0.063 mg/L	HIGH	2003	Co-limitation of nitrogen and phosphorus based on median TN/TP of 20.7 (662 values) during the VP.
03-1506	2213M	STJ RIV AB RICE CK	NUTRIENTS (CHLA)	TN = 1.38 mg/L TP = 0.058 mg/L	MEDIUM	2003	Phosphorus limiting based on median TN/TP of 23 (518 values) during the VP.
03-1511	2213N	STJ RIV AB DUNNS CK	NUTRIENTS (CHLA)	TN = 1.32 mg/L TP = 0.052 mg/L	MEDIUM	2003	Phosphorus limiting based on median TN/TP of 25.4 (339 values) during the VP.

¹ For nutrients, these are the median concentrations calculated from data generated from January, 1996 through December, 2002. The specific concentration of nutrients causing the impairment is unknown at this time.

² Priorities were retained from the 1998 303(d) list (i.e., HIGH or LOW), but original due dates of 2002 were changed to 2003.

³ VP represents the verified period which was January, 1996 through December, 2002.

⁴ HISTCHLA means that the water was listed based on a greater than 50% increase in chlorophyll a values over historical levels.

9/4/03