National Wildlife Federation
South Central Regional Center
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September 13, 2021

Submitted via email to Stormwater2020@floridadep.gov

Florida Department of Environmental Protection
3900 Commonwealth Boulevard
Tallahassee, Florida 32399-3000

Re: Comments on Stormwater Rulemaking

To Whom It May Concern:

On behalf of the National Wildlife Federation (NWF), we are submitting comments concerning the Department of Environmental Protection's (FDEP) request for public input ahead formal rulemaking to update Florida's stormwater operation and design regulations per direction of Section 5 of Chapter 2020-150, Laws of Florida. It is important that the state take further definitive action to address nutrient pollution led by sound science-based guidelines to protect and improve impaired waters across the state.

With continued population growth in Florida and the increasing amount of land converted to higher intensity uses with more impermeable surfaces, the need for increased capacity to regulate and address stormwater pollution will only grow. FDEP's 2010 draft Environmental Resource Permit (ERP) Stormwater Quality Applicant's Handbook would have served as a first step in addressing these needs while creating stronger safeguards for water quality. Although it was never adopted, it should serve as a base for stronger rulemaking that is reflective of a decade's gains in technology and scientific understanding of Florida's waters.

Recognizing that stormwater design and regulation is of high importance to our state, we see several topics that must be addressed in order to achieve a truly comprehensive stormwater rule:

i. **Definition of "Impaired Waters"**
ii. **Rulemaking Process**
iii. **Definition of "Pre-development"**
iv. **Impacts from climate change and sea level rise on stormwater systems**
v. **Guidance on redevelopment/retrofitting standards**
vi. **Local government capacity for more stringent stormwater regulation**
vii. **Presumption of compliance**

i. Definition of "Impaired Waters"

The geographical boundary which the state uses to roughly delineate the drainage basins surrounding the water body assessment units are known as Waterbody Identification number, or WBID[1]. WBIDs are split into 5 categories that are subject to a biennial reassessment. WBIDs that do not attain water quality standards are classified into EPA categories of 4a, 4b, 4d, 4e, and 5, or Waters Not Attaining Standards (WNAS). Category 5 WBIDs are considered "Impaired" and require the creation of a Total Maximum Daily Load (TMDL) where formal threshold limits on pollutants are then established[2]. At present, the Technical Advisory Committee (TAC) is only including the "Impaired" water classification of WBIDs to be subject to more protective regulations which includes Category 5 WBIDs on the Verified Impaired List awaiting the establishment of TMDLs. However, as WBIDs that are classified as Impaired only make up a portion of WBIDs that need additional protections to truly address water quality standards, **we recommend water quality standards and net improvement metrics be applied to all WNAS WBIDs.**

ii. Rulemaking Process

Members of the assembled TAC represent key stakeholder groups from the public, private and nonprofit sectors and as such **the TAC members should have the opportunity to review any proposed draft revisions to the stormwater rules before they adjourn and provide additional recommendations before rulemaking is initiated.** As the original objective of the TAC was to develop and provide consensus stormwater rulemaking recommendations with public input and constructive guidance for both the Water Management Districts and FDEP, we urge you to ensure the TAC has opportunity to fulfil this objective by making sure their recommendations are adequately characterized in rule before adjourning.

iii. Definition of "Pre-development"

Establishing an appropriate baseline of pre-development conditions and their associated pollutant loading rates is the lynchpin of effective planning for nutrient reduction calculations to restore water quality within impaired systems. **We recommend "pre-development" to be measured as before agriculture use, urbanization, and development thus capturing the natural vegetative community type of the landscape before any anthropogenic impacts.** Adoption of the definitions created within the March 2010 Draft of the ERP Applicant's Handbook will more effectively work to achieve relevant reductions and are defined as follows[3]:

"Pre-development" means the natural vegetative community type of the project area.

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[1] Florida Department of Environmental Protection Division of Environmental Assessment and Restoration. (2021). Waterbody IDs (WBIDs) (ID:0; version 6.2) [Data Set]. Retrieved from https://ca.dep.state.fl.us/arcgis/rest/services/OpenData/WBIDS/MapServer/0

[2] Florida Department of Environmental Protection. September 2021. Total Maximum Daily Loads (TMDL) Program. Retrieved from: https://floridadep.gov/dear/water-quality-evaluation-tmdl/content/total-maximum-daily-loads-tmdl-program

[3] FDEP and Water Management Districts. March 2010 Draft Environmental Resource Permit Stormwater Applicant's Handbook. 2010. Retrieved from: http://publicfiles.dep.state.fl.us/dwrm/slerp/StatewideStormwater_2010TACDraft.pdf

"Natural vegetative community type" means the landscape that currently exists or is likely to have existed prior to disturbance based on the vegetation community associated with the natural soil type of the project area, using information such as soil surveys, aerial photographs, and the vegetation communities that can reasonably be expected to have existed on the site before disturbance."

iv. Impacts from climate change and sea level rise on stormwater systems

The effects from climate change and sea level rise vary greatly based on geography, as such **we recommend an approach that utilizes the most recent scientific information on sea level rise and precipitation projections available for all of the rulemaking required by SB 712**. Some areas that would greatly benefit from incorporating sea level rise and increased rainfall data on stormwater systems include infiltration, inflow and setting of septic tanks, but we encourage the rulemaking to unilaterally incorporate the most recent climate change and sea level rise projections and update them regularly as new data becomes available.

v. Guidance on redevelopment/retrofitting standards

Florida is currently the third most populous state, lagging behind California and Texas. By April 1, 2025 alone, Florida's population is expected to grow by 845 net new residents per day. For perspective, this is the equivalent of adding "a city slightly larger than Orlando every year" to the state[4]. With anticipated increase in demand for retrofit and redevelopment projects from increased population, redevelopment should remain a viable option to prevent new development whenever possible to ensure the safeguarding of our increasingly limited rural and natural areas. **Redevelopment must be defined as noted in the March 2010 Draft of the ERP Applicant's Handbook and redevelopment/retrofitting should be incentivized while keeping the same regulatory standards for redevelopment as new development.**

vi. Local government capacity for more stringent stormwater regulation

Stormwater codes should allow for locally and regionally tailored regulatory elements surrounding stormwater discharge to ensure and restorative and protective measures that can go beyond the baseline established by the state. This assurance for local governments to protect their water centered economies as needed through the creation of more robust stormwater codes with geographically specific and local needs are vital. As such, **any new rulemaking should not preempt local governments from local measures that go beyond the state established baseline.**

vii. Presumption of compliance

10/2 General Permits or 10/2 Self Certification Permits forego the higher level of review and scrutiny of compliance than Individual Permits. This unchecked cumulative impact of 10/2 permits in WBIDs where waters are not attaining standards undermines the objective of attaining net improvement. **Rulemaking should hold 10/2 General Permits to the same level of scrutiny and review as required by the agencies for Individual Permits.** In addition to the

[4] Florida Office of Economic & Demographic Research. March 2021. Demographic Estimating Conference Executive Summary. Retrieved from: http://edr.state.fl.us/content/conferences/population/demographicsummary.pdf

presumption of compliance for 10/2 General Permits, current assumptions of compliance with water quality standards must change to include continual monitoring and maintenance of existing stormwater systems. **Rulemaking should require effective and quantifiable continual post construction monitoring and maintenance to ensure functionality of stormwater systems and protection of the state's water quality within the permitting process.**

In summary, the National Wildlife Federation appreciates the opportunity to provide input on the stormwater rulemaking proceeding. We believe addressing the points above can lead to scientifically sound and protective criteria guidelines to create stormwater rule, that in turn can support reductions in nutrients in Florida's waters. These rules, alongside other programs to restore and protect water can ensure livable communities and healthy fish and wildlife. And to quote the Director of FDEP's Division of Environmental Assessment and Restoration in her 2020 Integrated Water Quality Assessment for Florida Letter to Floridians, "Florida's rivers, streams, lakes, estuaries, and coastal waters are spectacularly beautiful. More than that, they are essential natural resources, supplying the water necessary for aquatic life, both large and microscopic; drinking water; recreation; industry; fishing and shellfish harvesting; and agriculture. Protecting these abundant water resources, supporting restoration efforts, and preserving them for the future is your responsibility and ours."[5]

Thank you for receiving and reviewing public comment during this process and for your commitment to protect Florida's water quality.

Sincerely,

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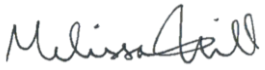

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[5] Florida Department of Environmental Protection. June 2020. 2020 Integrated Water Quality Assessment for Florida: Sections 303(d), 305(b), and 314 Report and Listing Update. Retrieved from: https://floridadep.gov/sites/default/files/2020_IR_Master_FINAL%20-%20ADA.pdf