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Borja Crane-Amores
Program Administrator, NPDES Stormwater Program
Department of Environmental Protection
2600 Blair Stone Road
Tallahassee, Florida 32399-2400
Via email: Borja.CraneAmores@dep.state.fl.us

Re: Comments on the Draft Water Quality Enhancement Area Credit Transactions Rule, 62-332

Dear Mr. Crane-Amores,

Audubon Florida appreciates the opportunity to comment on the March 2024 draft of the proposed rule detailing the credit program for water quality enhancement areas (WQEAs). Much progress has been made in clarifying the rule language and detailing several aspects of the program. Given the severity of water quality problems throughout the state, much of it related to stormwater, it is imperative that this rule provide robust protections for Florida's waterways. Audubon is committed to assisting DEP in its efforts to safeguard Florida's environment and offers the following general and specific comments on this draft.

General Comments

Relationship of this rule to other efforts
It would be helpful to have a summary explaining differences in the scope and requirements of this rule and the existing Water Quality Credit Trading rule (62-306). Further, DEP should share with stakeholders an explanation of how these rules relate to or may change due to legislation passed in the 2024 session. SB 1532, if signed, will require several updates to this rule.

Additional features allowed in WQEAs
Many water quality treatment areas in Florida that utilize wetland systems are also valuable recreational resources. Will DEP consider recreational amenities within WQEA permits or do any barriers to such inclusions exist? These features may be avenues for revenue generation that could support the WQEA in perpetuity.

Specific Comments

200 – Definitions

(3) "Enhancement credit" – definition should state credits are, "removed annually from a permitted WQEA," to avoid any confusion.

(5) "Natural system" – defining engineered systems and constructed wetlands as "natural systems" is confusing. Perhaps use, "nature-based systems," or, "wetland-based systems," if the idea is to convey that the technologies must employ wetlands as their treatment system.

(10) "Water quality enhancement service area" – we support the "offset pollutant contributions" language change in this definition.

300 – General Requirements

The previous draft contained language requiring habitat diversity and fluctuating water levels. We understand the difficulty in setting minimum standards that every site must achieve, but do not think the goals of that section should be entirely removed. We encourage DEP to reconsider this concept and bring back some language to improve the overall ecological value of WQEAs.

Section (6) is a good inclusion to avoid any uncertainty about which pollutant-reduction activities qualify for credits.

Section (9) provides an important exclusion of WQEAs in areas designated for conservation, mitigation, restoration, or reclamation by state law or permit. We suggested the addition of "areas purchased for conservation through federal, state, or local programs."

400 – Enhancement Credit Generation and Valuation

(1)(b) states that the initial valuation of credits shall be based on, "conservative estimates." This is good practice, but this process should be clarified. We suggest conservative estimates be defined as a 20% reduction from modeled estimates for initial valuation. However, there could be allowances for alternative initial valuations if relevant data from real-world monitoring is available and deemed applicable to the WQEA being permitted.

(1)(d) We recommend adding "pollutant reduction plans" as mentioned in Section 300(6).

500 – Service Area and Enhancement Credit Locational Value Factor Adjustments

(2)(a)- Models that produce Locational Value Factors (LVFs) should be updated frequently to account for changes in the WQEA service area including land use changes, additional loadings, etc., that may alter the attenuation of nutrients downstream from the WQEA. Preferably, this update should be performed before each sale of credits. The rule language should state when the LVF analysis is to be conducted in relation to each sale of credits.

62-332.600 Enhancement Credit Transactions and Credit Use

(5) – it is not clear what, "credit transactions are between owner and purchaser," means precisely. DEP is involved in several aspects of the transaction; some clarifying language would help.

(11) should clarify that the total number of credits released at any time will never exceed the measured and verified units of pollutants being removed by WQEA at that time. The existing language states the number of credits, "will be based on" the performance criteria, but does not explain the relationship. It is imperative that released credits are based on actual performance of the WQEA at the transaction.

62-332.800 Enhancement Monitoring and Continuing Credit Verification

The rule takes the positive step of requiring monitoring of real-world conditions to evaluate WQEA success. However, it includes very few requirements for the monitoring plan. DEP has extensive expertise and experience in nutrient removal projects and water quality monitoring and should provide more details on how a successful monitoring plan is designed and what capabilities are required to confidently evaluate the performance of the WQEAs (e.g., statistical power, ability to handle variable rainfall events, etc.).

Droughts, hurricanes, etc., are likely to impact annual performance within WQEAs. How will DEP handle short-term variation in water quality from WQEAs from these types of events? What happens if an annual review shows reductions are below those needed for credits sold? Perhaps the use of a 5-year moving average would help ensure any measured benefit is likely to persist over time. We believe this is an area in need of continued discussion as rule development continues.

62-332.900 Compliance and Enforcement

Compliance and enforcement take on an additional level of importance for WQEAs since there are separate entities responsible for the discharge and removal of pollutants. Per the rule, DEP is unable to take action against the polluter if they have purchased credits appropriately. Therefore, the compliance and enforcement mechanisms for the credit generator must be able to guarantee the appropriate levels of pollutant reduction in perpetuity.

DEP is using the wetland mitigation program (Rule 62-342.700, F.A.C.) as a template for the financial requirements relating to WQEAs. However, there has been much discussion recently about the ability of mitigation banks to meet their obligations in perpetuity with the current financial requirements in place. Discussions of the adequacy of the wetland mitigation requirements should be held and issues resolved before the finalization of this rule that references them.

Thank you for considering our comments; we look forward to participating further in this rulemaking process. Please contact us if you have any questions.

Sincerely,

JWraithmell

Julie Wraithmell
Executive Director
Audubon Florida