

Mike Kelter PE

From: Mike Kelter PE [mkelter@bellsouth.net]
Sent: Sunday, February 28, 2010 1:17 PM
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Subject: Meeting w/ USEPA on Tuesday March 2: WBIDs 2589 and 2389
Attachments: Stakeholder Meeting Agenda - March 2010 (Revised 2 25 10).doc

Drew and Jan,

I believe that you all know I am totally appalled by all of this. Last September the stakeholders signed onto your proposed TMDLs for numerous waterbodies, including Doctor's Lake (WBID 2389) and Sixteen Mile Creek (WBID 2589). Many of the stakeholders believed that some of FDEP's analysis was at the margins of statistical relevance. Nonetheless, we collectively worked with your staff to agree on the FDEP TMDL that was adopted prior to the deadline of September 30, 2009. Our understanding was that if we did this, we would not get a USEPA TMDL.

Interestingly, USEPA gives the Stakeholders less than 24 hours to implement their TMDL before the Feds step in to tell us we don't know what we're doing. . .

. . .And here we are today, five months later, having to spend our time and taxpayers money re-inventing the wheel for numerous TMDLs just to please USEPA. That's the wrong answer. I wasn't privy to all of this five months ago. I've only known this for a couple of weeks—I've been busy helping to clean up Florida waters in the local communities.. It is occurring to me that many other people who should have been notified of all this on October 1, 2009 are also in the dark. Maybe we're just the 10% that didn't get the memo. However, maybe we are the tip of a larger iceberg.

In addition to the questions that you have placed on the agenda for discussion, I would like to add a few other questions:

GENERAL QUESTIONS:

1. **WHERE DOES USEPA GET ITS DATA?** In Florida, as in most other literate communities, it is customary for authorship of technical papers to be acknowledged. In the case of the USEPA reports on Doctors Lake and Sixteen Mile Creek, it appears that much of the work of FDEP's Dr. Magley, et.al. has been cut and pasted into the USEPA documents without crediting the author. While the issues of plagiarism are small potatoes in this matter, the issue of USEPA's radically different conclusions based on

the same analysis is major. Somebody reached those conclusions on the taxpayer's dime. I would like to know who authored the USEPA reports, with names, phone numbers, and e-mail addresses.

2. **WHO FROM USEPA ARE WE MEETING, AND WHAT ARE THEIR CREDENTIALS?** USEPA knows the names and communities of stakeholders who they will be meeting, yet the names and positions of the USEPA representatives have remained a secret. The stakeholders are entitled to know who they will be meeting with prior to entering the meeting room.
3. **WHAT ARE USEPA'S PLANS TO PROVIDE FUNDING TO LOCAL STAKEHOLDERS TO PEER-REVIEW USEPA "SCIENCE"?** Local stakeholders have already expended enormous sums of money to peer-review and comment on the FDEP TMDL. We should not have to expend more tax-payer money to peer-review USEPA's new rules. Many of these stakeholders are small farmers and local governments who don't have enormous resources, like the Federal government appears to have. Since these new rules are proposed solely at the whim of USEPA, does USEPA plan to provide funding to these stakeholders to check USEPA math and methodology? I know that local and state elected leaders would like to know the answer to this. Based on my conversations last week with our Congressional delegation, they would be interested as well.

QUESTIONS REGARDING DOCTOR'S LAKE:

1. **WHAT DOES DOCTOR'S LAKE HAVE IN COMMON WITH THE AMAZON RIVER?** USEPA states on page 24 of their report that they didn't take the time to model the Doctor's Lake WBID to determine the target nutrient loads. USEPA suggests short-cutting acceptable scientific methods by creating an average target for nutrient and biological oxygen demand (BOD) based on results (from un-named authors) modeled in fourteen other WBIDs. Out of that list of fourteen WBIDs only three are lakes, and only one (Doctor's Lake) is a lake directly connected to a marine portion of the St. Johns River. The majority of the waterbodies used to develop the average target loads are located in the middle and upper St. Johns River Basin. It would make just about as much sense to use the Amazon River as the basis for rule-making.
2. **HOW DOES USEPA ACCOUNT FOR NUTRIENT LOADING INTO DOCTORS LAKE FROM THE ST. JOHNS RIVER?** During our discussions with FDEP regarding the Doctors Lake TMDL, I pointed out studies that have been done which demonstrate tidal transport of dye from the Buckman WWTP outfall into Doctors Lake. Buckman is miles downstream of the Doctors Lake inlet. The CCUA Miller Street WWTP and the Town of Orange Park's Ash Street WWTP discharge treated effluent into the St. Johns River upstream of Buckman and downstream of Doctors Lake Inlet. All three WWTPs are currently expending millions of dollars to reduce nutrient discharges to the St. Johns River, which we all agree will have a positive impact on water quality in Doctors Lake. Neither the Magley, et.al. report (FDEP) nor the USEPA report (author unknown) takes this into account. FDEP recognized this issue as problematic and helped devise "non-additive" language in the TMDL rule to protect local

governments' efforts to clean up the River. How does USEPA intend to address this issue?

3. **WHAT IS THE DOSE-RESPONSE BASIS FOR USEPA TO CONCLUDE THAT TOTAL PHOSPHOROUS (TP) MUST BE REDUCED IN DOCTORS LAKE NEAR DOCTORS INLET?** In the Town of Orange Park, the Town Council, which governs the stormwater and wastewater functions for the Town, has developed its Basin Management Action Plan around reduction of Total Nitrogen (TN) based on science developed by FDEP and SJRWMD that demonstrates very little correlation between TP and algae growth in the marine portions of the River. No analysis is provided to the contrary by USEPA (we don't even know who the author of the report is).

QUESTIONS REGARDING SIXTEEN MILE CREEK:

1. **WHAT DOES SIXTEEN MILE CREEK HAVE IN COMMON WITH THE NILE RIVER?** USEPA states on page 16 of their report that they didn't take the time to model the Sixteen Mile Creek WBID to determine the target nutrient loads. USEPA suggests short-cutting acceptable scientific methods by creating an average target for nutrient and biological oxygen demand (BOD) based on results (from un-named authors) modeled in fourteen other WBIDs. Sixteen Mile Creek is a manmade canal. Out of the list of fourteen other WBIDs used to derive an average nutrient target, only one water body on that list (Sixteen Mile Creek) is a man-made canal with integral stormwater treatment structures, constructed with permits from Agencies of the State authorized to issue construction permits. The majority of the waterbodies used to develop the average target loads are located in the middle and upper St. Johns River Basin. It would make just about as much sense to use the Nile River as the basis for rule-making.
2. **HOW DID USEPA ARRIVE AT A CONCLUSION THAT SIXTEEN MILE CREEK WAS NUTRIENT IMPAIRED?** FDEP's report (Magley, et. al.) did not show Sixteen Mile Creek to be nutrient impaired. It was only shown to be DO impaired. Neither the FDEP report (Magley, et. al.) nor the USEPA report (unknown author) showed that mean annual chlorophyll *a* exceeded 20 micrograms/liter. Magley, et. al. stated a presence of algal mats, but could never document those observations. USEPA has documented nothing regarding algal mats. Sixteen Mile Creek stakeholders concede DO impairment, although many of us believe this impairment is more likely a redox reaction as a result of existing soil conditions than a nutrient-driven reaction. St. Johns County and Flagler Estates Road & Water Control District (two of the four MS4s within the WBID) only agreed to the nutrient reductions of 30% TN and 30% TP within the framework of downstream water quality protection (Specifically the Lower St. Johns River Main Stem TMDL). How did USEPA (author unknown) arrive at the conclusion that the load allocation in Sixteen Mile Creek needed to be reduced by 60% TN, 70% TP, and 7% BOD?

I have no problem with FDEP forwarding these questions on to USEPA or to anybody else in the State. I have blind-copied this e-mail to our Local Legislative Delegation and to members of our Florida Congressional Delegation. They need to be aware of the shenanigans that are going on here in Florida.

I have also attached a copy of the proposed agenda for Tuesday's meeting. I did this so that other stakeholders on the CC list, who are most likely also in the dark, could see what is being discussed.

Regards,

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