

STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

In re:

REASONABLE ASSURANCE PLANS FOR
SHELL AND PRAIRIE CREEK WATERSHEDS,
THE FLORIDA KEYS AND LAKE SEMINOLE
(PINELLAS COUNTY).

OGC No(s): 12-0616 – 12-0618

ORDER ADOPTING REASONABLE ASSURANCE PLANS FOR
SHELL AND PRAIRIE CREEK WATERSHEDS; THE FLORIDA KEYS; AND
LAKE SEMINOLE

Pursuant to Sections 403.061 and 403.067, Florida Statutes ("Fla. Stat."), and Florida Administrative Code ("F.A.C.") Rule 62-303.600, the Department approves and adopts the Reasonable Assurance plans for 1) Shell and Prairie Creek Watersheds; 2) the Florida Keys; and 3) Lake Seminole.

Reasonable Assurance plans detail activities agreed to by local stakeholders to redress impairments of specific surface waters through a process that is streamlined compared to standard regulatory procedures. Consequently, Reasonable Assurance plans result in more expeditious progress towards restoration. While the Department actively encourages the development and implementation of such plans, without local stakeholder leadership and commitments, Reasonable Assurance plans would not come to fruition and would not be successfully implemented. The three Reasonable Assurance plans adopted herein are examples of what can be accomplished by stakeholder driven restoration activities.

All three plans provide reasonable assurance that applicable water quality standards will be achieved in the future and that reasonable progress towards attainment of standards will occur in the next five years by setting forth

specific restoration projects and activities, dedicated funding for these actions, and a schedule for attainment.

1. Shell and Prairie Creeks

In 2004, the Southwest Florida Water Management District (“SWFWMD”) prepared the “Shell and Prairie Creek Watersheds Management Plan - Reasonable Assurance Documentation” and a stakeholder agreement for the plan. This plan is intended to address the impairments in Shell Creek (WBID 2041), Myrtle Slough (WBID 2040), and Prairie Creek (WBID 1962) and also the potential impairment of several waterbodies in the Joshua Creek and Prairie Creek Watersheds¹. In 2006 and 2009, the SWFWMD submitted reports summarizing performance under the plan in documents titled, “Shell and Prairie Creek Watersheds Management Plan – Performance Monitoring Summary for time period October 2004 – July 2006” and “Shell Creek and Prairie Creek Watersheds Management Plan – Second Bi-annual Performance Monitoring Summary for time period August 2006 – August 2008,” respectively.

The Department finds that the 2004 plan provides reasonable assurance that impairments related to total dissolved solids (“TDS”), chlorides, and specific conductance will be adequately addressed in Shell Creek (WBID 2041), Myrtle Slough (WBID 2040), and Prairie Creek (WBID 1962), and reasonable progress towards attaining water quality standards will be made in the next five years. As

¹ The Shell Creek and Prairie Creek Watersheds reasonable assurance documentation will also address potential impairments identified in the following waterbodies: Shell Creek Reservoir (WBID 2041B), Cypress Slough (WBID 2044), Unnamed Ditch (WBID 2058), Cow Slough (WBID 1964), Myrtle Slough (WBID 1995), Joshua Creek above Peace River (WBID 1950A), Joshua Creek above Honey Run (WBID 1950B), Lake Slough (WBID 1963), Unnamed Branch (WBID 1974), Honey Run (WBID 1977), Hawthorne Creek (1997), Hog Bay Slough (WBID 2001), and Gannet Slough (WBID 2020).

such, the Department approves and adopts the 2004 plan, attached hereto and incorporated herein as Exhibit A.

2. Florida Keys

In 2008, local stakeholders prepared a series of Reasonable Assurance plans titled, “Northern Keys Area Reasonable Assurance Documentation”, “Central Keys Area Reasonable Assurance Documentation”, “South Central Keys Area Reasonable Assurance Documentation”, and “Southern Keys Area Reasonable Assurance Documentation” to address nutrient issues in many of the waters within the Florida Keys. In 2011, a plan update was submitted in a document titled, “Florida Keys Reasonable Assurance Documentation Update.” In addition to providing a progress report on activities described in the 2008 plan, this update amends the schedule for restoration activities. Changes in the schedule are consistent with Chapter 99-395, Laws of Florida (“LOF”), which previously mandated compliance with wastewater treatment requirements by July 1, 2010, but was amended (through Chapter 2010-205, LOF) in 2010 to revise the compliance date to December 31, 2015.

The Department concludes that the 2008 plan and the 2011 plan update provide reasonable assurance that the restoration goals will be achieved by ensuring that all of the plan’s management activities will be implemented by 2015 for the following waterbody segments:

¹ The Shell Creek and Prairie Creek Watersheds reasonable assurance documentation will also address potential impairments identified in the following waterbodies: Shell Creek Reservoir (WBID 2041B), Cypress Slough (WBID 2044), Unnamed Ditch (WBID 2058), Cow Slough (WBID 1964), Myrtle Slough (WBID 1995), Joshua Creek above Peace River (WBID 1950A), Joshua Creek above Honey Run (WBID 1950B), Lake Slough (WBID 1963), Unnamed Branch (WBID 1974), Honey Run (WBID 1977), Hawthorne Creek (1997), Hog Bay Slough (WBID 2001), and Gannet Slough (WBID 2020).

- Northern Keys: WBIDs 6019, 6017, 6009, 6006A, 6006B, 6006C, and 6005EB, which are the Halo Zone WBIDs surrounding the islands of Lower Matecumbe Key, Upper Matecumbe Key, Windley Key, Plantation Key and Largo Key.
- Central Keys: WBIDs 6010, 6011A, 6011B, 6011C, 6012E, and 6016, which are the Halo Zone WBIDs surrounding Marathon, Key Colony Beach, Duck Key and Layton/Long Key.
- South Central Keys: WBIDs include 6014C, 6013A, 6013B, 6013C, 6013D, 6012A, 6012B, 6012C, 6012D, 6012E, 6010, and 6018, which are the Halo Zone WBIDs surrounding the islands of Boca Chica Key, Saddlebunch Key, Sugarloaf Key, Cudjoe Key, Summerland Key, Ramrod Key, Big Torch Key, Big Pine Key, Long Beach, No Name Key and Bahia Honda Key.
- Southern Keys: WBIDs include 6014A and 6014B which are the Halo Zone WBIDs surrounding the islands of Key West and Stock Island.

As such, the Department approves and adopts the 2008 plan and the 2011 update, copies of which are attached hereto and incorporated herein as Exhibits B and C.

3. Lake Seminole

In 2007, local stakeholders prepared a Reasonable Assurance plan titled, “Lake Seminole Reasonable Assurance Plan” to address nutrient impairment in Lake Seminole in Pinellas County. In 2011, a report summarizing performance under the plan was submitted to the Department in a document titled, “Lake Seminole 2011 State of the Lake Report for the Lake Seminole Watershed Reasonable Assurance Plan.” The Department concludes that the 2007 plan provides reasonable assurance that the goals of the plan will be achieved by ensuring that all of the plan’s management activities will be implemented and reasonable progress towards attaining water quality standards will be made in

the next five years. As such, the Department approves and adopts the 2007 plan, attached hereto and incorporated herein as Exhibits D.

THEREFORE, IT IS ORDERED

Pursuant to Sections 403.061 and 403.067, Fla. Stat., and Rule 62-303.600, F.A.C., the Department hereby adopts as enforceable agency orders the Reasonable Assurance plans, as those plans have been amended, for 1) Shell and Prairie Creek watersheds, 2) the Florida Keys, and 3) Lake Seminole (Pinellas County). Compliance with this order may be enforced pursuant to sections 120.69 and 403.121, Fla. Stat.

Notice of Rights

The Department's proposed agency action shall become final unless a timely petition for administrative hearing is filed under Sections 120.569 and 120.57 of the Fla. Stat., before the deadline for filing a petition. The procedures for petitioning for a hearing are set forth below.

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 publication of notice or receipt of written notice of this Order, whichever occurs first. 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. Any subsequent intervention will only be at the approval of the presiding officer upon motion filed pursuant to Rule 28-106.205, F.A.C.

Contents of Petition for Hearing

A petition that disputes the material facts on which the Department's action is based must contain the following information: (a) the name, address, and telephone number of each petitioner; and applicable OGC number; (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 petitioner, if any; (e) a statement of facts which petitioner contends warrant reversal or modification of this Order; (f) a statement of which rules or statutes petitioner contends require reversal or modification of this Order; and (g) a statement of the relief sought by petitioner, stating precisely the action petitioner wants the Department to take with respect to this Order. A petition that does not dispute the material facts on which the Department's action is based shall state that no such facts are in dispute and otherwise shall contain the same information as set forth above, as required by Rule 28-106.301, F.A.C.

Mediation

Mediation is not available.

Judicial Review

This Order is final agency action unless a person who is substantially affected by the Department's proposed agency action timely requests a hearing under Sections 120.569 and 120.57, Fla. Stat. 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.

DONE AND ORDERED this 7th day of February, 2012, in Tallahassee, Florida.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION



Herschel T. Vinyard Jr.
Secretary

FILED ON THIS DATE PURSUANT TO § 120.52,
FLORIDA STATUTES, WITH THE DESIGNATED
DEPARTMENT CLERK, RECEIPT OF WHICH IS
HEREBY ACKNOWLEDGED.



CLERK

2/7/12
DATE

Exhibit A

“Shell and Prairie Creek Watersheds Management Plan - Reasonable Assurance Documentation”

[Shell, Prairie, and Joshua Creeks RAP - 2004](#) (4.7 MB)
[Shell, Prairie, and Joshua Creeks RAP Update - 2006](#) (1.5 MB)
[Shell, Prairie, and Joshua Creeks RAP Update - 2008](#) (1.5 MB)

Exhibit B

Florida Keys Regions Reasonable Assurance Plan

[Florida Keys RAP - Northern Report](#) (5.1 MB)
[Florida Keys RAP - Central Keys Report](#) (6.6 MB)
[Florida Keys RAP - South Central Report](#) (6.7 MB)
[Florida Keys RAP - Southern Report](#) (5.9 MB)
[Florida Keys Technical Reference Document](#) (7.6 MB)

Exhibit C

Florida Keys Reasonable Assurance Document Update

[Florida Keys RAP Update - 2011](#) (1.7 MB)

Exhibit D

Lake Seminole Reasonable Assurance Plan

[Lake Seminole RAP -2007](#) (6.9 MB)

[Lake Seminole RAP Appendices - 2007](#) (2.7 MB)

[Lake Seminole RAP Update - 2011](#) (2.7 MB)