Florida Keys Reasonable Assurance Documentation Technical Working Group Meeting 6 June 29, 2007 Meeting Minutes

This is a summary of the sixth Technical Working Group (TWG) Meeting held June 29, 2007 at the Marathon Government Center among the Florida Department of Environmental Protection (FDEP) and representatives of stakeholders that comprise the TWG. The purpose of the meeting was to discuss the preliminary identified nutrient load reductions predicted and the process to complete the FKRAD documents. The meeting was attended by representatives of City of Layton, City of Marathon, City of Key West, Florida Department of Health, U.S. EPA, Village of Islamorada, and FDEP. A copy of the meeting agenda and sign-in sheet are appended to this memo

DISCUSSION

Identified Management Activities and Estimated Nutrient Reductions

- Model inputs (total nitrogen and total phosphorus) for wastewater loads, stormwater loads, base loads, and realistic management actions were discussed for stakeholders that were fully or partially committed to meet the 2010.5 requirements. These loads represent natural and anthropogenic loads.
- There has not been living resource quality targets identified that links the relationship between living resources and nutrient loads. Reasonable assurance will be measured more by administrative benchmarks than by quantitative ones.
- Significant nutrient reductions are projected for Key West as a result of the AWT and disposal of wastewater through deep injection wells.
- Percent nutrient reductions Key Colony and City of Layton are also significant.
- The reason why stormwater loads are not accounted for Key Largo WTD (KLWTD) is that KLWTD's mission is treat wastewater. Monroe County is responsible for stormwater management within KLWTD's area.
- Management actions and nutrient reductions for Islamorada have not been accounted for because Islamorada has not made a final decision regarding wastewater treatment. A meeting will be held on July 24, 2007 in Islamorada to decide between building its own facility and connecting to its wastewater system to KLWTD. Islamorada will be able to demonstration 100% wastewater load reduction if it decides to connect to KLWTD treatment, or demonstrate less than 100% wastewater load reduction if it decides to dispose wastewater by means of shallow well injection.

- There are no nutrient reductions projected for FDOT because it has not yet committed itself to management actions are associated with specific treatment quantities.
- A question was raised on how nutrient reductions in bridges throughout the Keys will be factored? The issue is not how the bridges will be factored, but the lack of management practices at the entrances and exits of the bridges to capture and treat runoff. It is much more cost effective to treat runoff at the entrances and exits of bridges than it is to capture and treat runoff throughout the bridge decks.
- The most cost effective management practices for reducing nutrient loads to near shore waters are stormwater management practices. The practices could reduce other contaminants besides TN and TP.
- Florida State Parks comprised mainly of natural land – most of load could be due to natural components
- Monroe County Composite includes portions of unincorporated Monroe County that is undeveloped and that produces approximately half of stormwater load.
- As of June 29, 2007, the commitments to which the stakeholders have agreed result in total nitrogen (TN) and total phosphorus (TP) reductions of 32% and 36%, respectively, for the Florida Keys as a whole. These composite reductions might not be sufficient to prove reasonable assurance.
- Current wastewater practices in the Florida Keys contribute most of the nutrient loads introduced into the near shore waters.
- Modeling of nutrient loads to the near shore waters will consider shallow well injection as a direct discharge. Despite the treatment, this conservative approach will yield results more favorable to the reasonable assurance process.

Critical Stakeholder Decisions

- Two options for the FKRAD are 1) to produce one document that highlights a cooperative approach among stakeholders or 2) produce separate documents that highlight the efforts of those stakeholders that have made substantial commitments towards nutrient load reductions.
- As a result of the commitments, associated load reductions, and inconsistent levels of assurance throughout the Florida Keys, the viable option appears to be to proceed by creating three separate documents: one reasonable assurance document for Key West, another for Key Largo, and one information document for the central Keys. The commitments received as of June 29, 2007 and the geography of the Florida Keys indicate that this option will have the greatest chance for success for communities that have made strong commitments for nutrient reductions.

- So far, Key West can build a case of good reasonable assurance. Key Largo can also provide a case for reasonable assurance. Although the Central Keys has had a legacy of growth, it can only provide an information document with little reasonable assurance on the nutrient load reductions.
- If Islamorada decides to connect to KLWTD, it will be included in the Key Largo RA document. Although Layton and Key Colony have made strong commitments towards establishing reasonable assurance, they will probably be placed under the Central Keys information document because of their geographic location. If Layton and Key Colony were isolated like Key West and Key Largo, they could prove reasonable assurance and be placed under a separate document from the rest of the Keys.
- If TMDL would be in place, Layton and Key Colony would not be required to implement further activities until all other stakeholders come up to the same level.

What Do We Do Now?

- The Central Keys have until July 15th to make a final decision on their 2010.5 commitments. The most important commitment at this point is wastewater management practices. Unless the Central Keys are willing to commit to 2010.5 by July 15th, an information document will be created for them that will result in TMDL. A lack of commitments (signatures) results in a limited RA.
- By proving reasonable assurance, stakeholders control the time period for the implementation of projects and the manner in which the projects are implemented. In a TMDL, the state and federal government control the destiny of stakeholders. Fines are levied on stakeholders by regulating agencies if project are not implemented on time.
- TMDLs and subsequent basin management action plans (BMAPs) are also challengeable by third parties (if they think the TMDLs are too lax) whereas the Reasonable Assurance Documentation is not challengeable.
- Discussions about the repercussions of a TMDL should be carried out at council level. Stakeholders have to measure the costs associated with complying and not complying with a TMDL.
- Chapter 99-395, Laws of Florida, apply in both the RAD and TMDL. However, more penalties will levied on stakeholders in addition to those in Chapter 99-395 in a TMDL scenario. Also, the TMDL may (at least in theory) require even greater load reductions than the RAD.
- Suggestions were voiced by the TWG about quantifying the dollar figures associated with TMDL penalties in order to make residents and council members aware of the consequences.
- Regulators are faced with the reality that there will be difficulties in having landowners pay the costs of high connection fees to a centralized sewer system

and installing ATU facilities, in the case that the centralized sewer system is not provided by the 2010 mandate deadline. The TWG needs to make landowners aware of the consequences about not meeting the 2010 mandate deadline.

- Another issues with associated with the enforcement of the 2010 mandate in the Florida Keys is that some properties are not big enough for ATU facilities.
- The TWG feels that there is a lack of education among Florida Keys residents regarding the importance of going the reasonable assurance route and the consequences associated with the TMDL route. The TWG suggested issuing a press release to educate residents about the reasonable assurance document and the importance of stakeholder commitments.
- In the end, commitments on wastewater practices must be made by all stakeholders in either the RA or TMDL scenario. According to the consent decree between EPA and Earthjustice, the nutrient TMDLs for the Keys are due in 2011, so if the 2010 mandate is not met, the TMDL is will be imposed by EPA in 2011 anyway!
- Draft documents (two RAD and one information document) will be distributed for review towards the end July. Final documents with signed stakeholder agreement will be sent for state approval on August 30, 2007.
- As of June 29, 2007, FDEP has not received comments on the stakeholder agreements.

Initial Draft of Stakeholder Agreement

- The intent of the stakeholder agreement is to identify the participants, including regulators, programs, and other interests, define management activities, establish responsibilities, identify anticipated benefits, and confirm participation through signatures.
- Since the most successful option appears to be three documents, the agreements will likely be geographically differentiated. Further, the Keys does not have a centralized management entity that can track the progress of all reporting stakeholders; therefore, agreements will be structured such that implementation of management activities will be carried out by their respective stakeholders and progress reports will be submitted by individual stakeholders.

Working Schedule

- The next TWG is tentatively scheduled for July 25, 2007.
- FKRAD Document
  - Finalize stakeholder summaries: end of June
  - Digital Release of Draft FKRAD: end of July

- ☐ Digital Release of Interim Document: August
- ☐ Digital release of final FKRAD: September
- ☐ Distribution of Final Printed FKRAD: September/October
- ☐

- Stakeholder Agreement
  - ☐ Release of initial draft agreement: April
  - ☐ Release of interim draft agreement: June
  - ☐ Distribution of final agreement: August
  - ☐ Execution of final agreement: September

Next Meeting

- Technical Working Group meeting 7: July 25, 2007 at the Marathon Government Center