



Jacksonville Waterways Commission Lynette Self, Chair

The monthly meeting of the Jacksonville Waterways Commission was called to order on Thursday, August 3, 2006, 9:08 a.m., in the City Council Chambers by the Commission's Chair, Council Member Lynette Self.

The minutes for the June 1, 2006 Commission meeting were approved.

The Chair noted that we are trying to get the permitting moving forward for the Goodbys Creek boat ramp dredging and asked Dave Hankla of the U.S. Fish & Wildlife Service to assess where we are. There had been a recently held meeting that addressed the issue of permitting for the boat tramp dredging. Mr. Hankla and Council Member Self had a conference call with Florida Fish & Wildlife Commission officials. FFW & U.S. Fish & Wildlife are both evaluating the permit. There were four issues of concern: (a) the timing of dredging (b) the type of dredge that would be used (c) the ultimate depth of dredging to be done and (d) signage. U.S. Fish & Wildlife would like to go on site to assess how things are operating at the ramp, to see where the channel markers are and to determine whether or not any clarifications are needed. The one issue that is left is whether the depth should be the traditional 5 feet or 6 feet. The depth issue does not appear to be difficult to resolve. The Chair said that she expected to see the permit issued between December and February. Mr. Hankla indicated that the dredging would be done in the winter months when most of the manatees are gone.

In the monthly Manatee Update, Dr. White indicated that there had been one manatee death, a prenatal fatality, reported in the Julington Creek area, south of the Buckman area. This fatality occurred on July 15th. There was a report of a manatee being struck by a boat at Goodbys Creek but the report is unconfirmed and there was no awareness of an injured manatee or carcass in the vicinity in the week since the report. Dr. White reported making a fair amount of visits to Goodbys to monitor the boat activity and count the number of trailers in the parking lot. The boat ramp is getting high usage particularly on the weekends. It is typical to see up to 30 trailers

in the lot on Saturdays and Sundays. We are seeing a popular boat ramp with lots of usage. Dr. White said that he is concerned about the reports that some of the boats are not obeying speed limits. He felt that it would be advisable to law enforcement agencies to make their presence known in that vicinity. Sgt. Suber said that JSO is monitoring the ramp every day and the new Mandarin Park ramp on Julington Creek, as well. Boaters have generally been well behaved at the ramps. The only complaints that JSO has encountered have concerned jet skis in Goodbys that can move beyond the law's arm because the shallowness of the water prevents JSO vessels from pursuing speeding watercraft. JSO is currently trying to acquire their own jet skis or some other jet driven watercraft to enforce those areas. In terms of manatee sightings, the water has been extremely warm, between 85 and 88 degrees.

On a June 2nd aerial survey, Dr. Pinto saw 93 manatees; on June 16th the number was 83, on July 1st, 119 were seen and on July 19th, 64 were sighted. As the manatees are still around, boaters ought to be obeying speed limits and going slow in shallow waters. It appears that experienced boaters observe the speed limits. Those who appear to be in brand new boats are very often those boaters that do not observe the speed limits. Commissioner Bailey commended JSO's proactive presence in Goodbys. He cited the need for better signage for the bridge. There are too many boaters who do not seem to understand precisely what idle speed is. On the whole, the Commissioner felt that JSO and the other law enforcement agencies that show up at Goodbys are doing a wonderful job. Commissioner Lamb suggested that having the boat sales people give each new boater a copy of the Florida Wildlife Commission's publication *How to BOATSMART: Florida Boating Safety Course* would help. The publication is free. Senator Jim King observed to Sgt. Suber that in the recent legislative session, the Legislature was able to prevail upon the personal watercraft manufacturers to donate crafts to entities looking for increased law enforcement and that he, Senator King, would be more than happy to intercede on JSO's behalf to have the industry loan JSO the needed craft for a year.

Dan Cronrath, Recreation Planner, Parks, Recreation, Entertainment & Conservation Department, provided the Commission with the FIND update.

Mr. Cronrath reported that since the June Commission meeting, the annual FIND reception was held for the Commissioners (39 in attendance). We

also got the preliminary results of the July FIND board meeting on how the City's 2006 FIND applications fared. All five projects that the City tendered this year were recommended for funding. Council Member Copeland commended Mr. Cronrath and Commissioner Lowe for their outstanding work in preparing the FIND applications and acquiring the subsequent funding.

Neal Armingeon, the St. Johns Riverkeeper, Vincent Seibold, P.E., Water Facilities Administrator, Florida DEP and Paul Steinbrecher, Director, Permitting and Regulatory Conformance, JEA, proceeded to engage in a discussion, exchange and Q & A on the St. Johns River nutrient TMDL (Total Maximum Daily Load).

The point-counterpoint exchange emanated from the question put to the Commission at its previous meeting on whether the Commission had taken a position on a recently announced DEP policy decision on permissible nutrient TMDL for the St. Johns River.

Before commencing his remarks, the Riverkeeper, Neal Armingeon, thanked Senator King, the Mayor's Office, Brad Thoburn in particular, Representative Mahon and the partners of the River Accord for their hard work and leadership in promulgating the River Accord (July 28th).

At the outset, the Riverkeeper said that despite the varying viewpoints and perspectives in looking at the problem that TMDL entails, we all need to do a better job in protecting the river. Mr. Armingeon then proceeded to highlight the Riverkeeper's involvement with TMDL (a hard copy of his talking points had been distributed to the Commissioner and those in attendance at the meeting) and proposed to discuss TMDL and SSAC (site specific alternative criteria) as separate but interrelated issues.

Mr. Armingeon proceed to enumerate the procedural decisions and events that brought us to where we are today in the development of the Nutrient TMDL. He traced the efforts to reduce nutrients in the river and restore the river's health.

When the Clean Water Act was enacted in 1973, a component of the measure was a mandate to have TMDLs put in place at the nation's water bodies. Simply put, TMDL was the amount of pollution that could be put into a segment of water that renders the water body suitable for fishing and swimming. In the late 1990s, a group of citizens decided that they wanted

to see TMDLs actually computed. Most states did not do this. Even though this computation was required under the Clean Water Act, the vast majority of states did not comply. In 1998, a group, Earth Justice, won a settlement with the EPA and because of that settlement, the State of Florida was required to establish a TMDL for the lower St. Johns River. A committee was established (the TMDL Stakeholders and Policy Committees) and the Riverkeeper was a part of the committee.

In spring 2003, a draft TMDL model determined that it would take a 60% reduction of nutrients to achieve healthy chlorophyll levels and have the river reach its designated use standards. Dischargers objected. The following summer, the St. Johns River Water Management District modified the model used and determined that a 32% nutrient reduction was required. In numerous public forums, the Riverkeeper objected to the model's assumptions and subsequently challenged DEP's nutrient TMDL, questioning its legality. According to Mr. Armingeon, the objections to and concerns raised about the revised standards by the Riverkeeper were ignored by the state. The Riverkeeper and Clean Water Network opposed the nutrient TMDL proposal that the State of Florida forwarded to the Environmental Protection Administration. In November 2003, the Riverkeeper and Clean Water Network noticed their intention of suing EPA if that agency approved Florida's TMDL. In spring 2004, EPA approved Florida's TMDL. Preparations were then underway for trial. Prior to the trial, however, in October 2005, EPA rescinded its previous approval of the nutrient TMDL and subsequently established a legal nutrient TMDL requiring the of 60% reduction.

According to the Riverkeeper, at the urging of major polluters, the DEP, in fall 2005, created SSAC (a site specific alternative criteria) in an effort to void the EPA's TMDL pollution reduction ruling. By lowering state water quality standards for dissolved oxygen (DO), SSAC allowed minimum water standards. According to the Riverkeeper, the difference between the original TMDL and SSAC is that the latter allows an additional 830,000 lbs of nitrogen to be discharged into the river per year. In January 2006, DEP published a new rule (62-302.800, *Florida Administrative Code*) that, according to the Riverkeeper, makes it easier to lower water quality standards. In May 2006, the Environmental Regulatory Commission met in Jacksonville and voted to adopt the SSAC and reduce DO water quality standards. The following month, the Riverkeeper and Clean Water Network filed a suit in Federal Court challenging EPA's approval of rule 62-

302.800, and, in effect the SSAC.

The Commission next heard from Vincent Seibold, P.E., Water Facilities Administrator, Florida Department of Environmental Protection who framed his presentation as a scientific assessment of TMDL and the site specific alternative criteria (SSAC). He said that DEP's positions were based on the best available scientific evidence.

At the outset, Mr. Seibold said that he agreed with the Riverkeeper, that we are all committed to protecting the health of the river and that it is a common goal to getting the river back to its healthy condition.

TMDL was defined as the maximum amount of a specific pollutant that a water body can assimilate while maintaining its designated uses.

In defining SSAC, Mr. Seibold explained that Florida Administrative Code authorized DEP to go through a scientific endeavor to set a *site specific alternative criterion* for a water body and that SSAC has been around since the 1979 changes in the Clean Water Act.

BMAP – Basin Management Action Plan – is currently where we are in our local TMDL process. It is a document that will explain the implantation actions, specific load and wasteload allocations, as well as document the stakeholder efforts to achieve an adopted TMDL.

Other definitions that come into play in the discussion include *point source* which is an identifiable and discrete conveyance such as a pipe from a wastewater facility to surface waters, and *non-point source* which is a diffused runoff of stormwater to surface waters through a pipe, ditch, channel or other means.

Mr. Seibold then turned to the question: is the St. Johns River (Lower St. Johns River) impaired. He proceeded to discuss slides depicting last year's bloom and its impact on the river. DEP staff and St. Johns River Water Management District provided aerial photographs. A map highlighted the Lower St. Johns River with different fresh and salt water zones, the watershed area that has the specific TMDL that we are focusing on, a water surface area that is 115 square miles and is the last 101 river miles of the Lower St. Johns River, between the Ocklawaha River and the mouth at Mayport. The three ecological zones of the river are the predominantly

fresh water zone from Palatka going to the Julington Creek or Green Cove areas, then turning brackish, alternately fresh and marine to the Fuller Warren Bridge; and then salt water zone from the Fuller Warren Bridge to the mouth of the river.

The major impairment of the river is primarily an excess of nutrients that results in the algae bloom, lower dissolved oxygen levels and a lower transparency that can block sunlight from the submerged vegetation. Water quality criteria for nutrients currently mean that the nutrient concentration in a body of water should not be altered to the extent that there is an imbalance of flora or fauna. There has been a water quality standard in the Florida Administrative Code for a long while. In the future, a narrative-based standard will be in place. A nutrient based load will be based on an allocation to point and non-point sources (dischargers).

Mr. Seibold then explained where these loads are coming from. In a 1995-99 Nitrogen Load Summary for the Lower St. Johns River, the sources include the upper river, coming through Lake George and moving north; the nitrogen contributions that are anthropogenic (man-induced) inputs; and the natural background nutrients. As development and growth proceed, the latter will diminish. Several factors determine the current loading. For point sources, there are 36 permitted wastewater plants that discharge directly into the Lower St. Johns. DEP gathers data on a monthly basis and can calculate and monitor these loads. For non-point sources, we have to look at land use, both agricultural and urban land uses that would generate different types of loads and nutrients.

The wastewater plants that are discharging into the St. Johns that DEP regulates include: DW (domestic wastewater, or human type of wastewater) and IW (industrial wastewater). In Duval County alone, there are 17 domestic wastewater plants and their permitted capacity for discharge is approximately 130 million gallons per day. The plants may not discharge as much but that is the amount that the permit authorizes. There are 3 industrial wastewater plants in Duval with a permit capacity of nearly 30 million gallons per day. The total for the lower basin point source dischargers is 222 or so million gallons per day permitted capacity. In the marine and Duval County section of the Lower St. Johns, the marine section has the greatest amount of loads with the point sources contributing the most.

Mr. Seibold said that contrary to press stories alleging that DEP is allowing additional nutrients to be discharged into the river, the opposite was true; DEP is calling for a reduction of nearly 50%. DEP has a TMDL schedule in place and is committed to addressing the impairment. DEP has to establish the TMDL under the rules through science, consensus building and permitting. This entails identifying and quantifying all of the point and non-point source pollutants impairing water quality. Stakeholder participation (numerous meetings) has been key and critical for consensus in reaching a collaborative resolution to the TMDL issue. We are now poised to develop a Basin Management Action Plan (BMAP). If the stakeholders cannot reach a consensus, then DEP has to step in and generate a BMAP document.

Mr. Seibold concluded by discussing the current Dissolved Oxygen (DO) standard; the proposed DO SSAC for the marine portion of the Lower St. Johns River; the various methodologies that DEP engages in to arrive at its scientific data; and a timeline for the adoption and implementation of a proposed DO SSAC to achieve nutrient reduction. He said that what we needed to do now was to set the rules in place and proceed to let the wastewater plants and the non-point stormwater run-off generators go through management strategies to reduce their load over the next three, five and ten years and get the nutrient load down.

Neil Armegeon commented that it is disingenuous to say that the river cannot meet or achieve a 5 milligram per liter standard.

Senator King asked why we could not accept and work with the Riverkeeper's criteria, standards or goals since it will be three to five years before anything can be statistically compiled indicating that we are on target? Mr. Seibold answered that science indicated that the Riverkeeper's numbers were unattainable.

The Chair next called upon the JEA representative, Paul Steinbrecher, Director, Permitting and Regulatory Conformance, to add JEA's perspective to the discussion. His points included: regardless of what the standards are, the loads are already much lower than they were five years ago. We still have a ways to go. Compared to 1999 levels, JEA has reduced nitrogen by about 40% already without any standard. Under the recently announced River Accord, JEA can team up with the City and others such as the Legislature, the St. Johns River Water Management District, pool resources

and direct those funds to projects that have the best nitrogen removal per dollar. If you looked at the combined City of Jacksonville total stormwater load and JEA's load, two of the biggest combined loads in the river's marine section, the section that the two control, there has been a reduction from 1,860 tons per year from the two sources in 1999 to 1,260 tons per year. Under the River Accord, we are going to go all the way down to 380 tons per year. Public funding has been key. There should be less suing and more fundraising.

Senator King then proceeded to discuss proposals to engage smaller, upper basin communities. Much of what is causing the problem is coming from the upper basin. There is rapid development in these communities. The area is being developed land-wise much more rapidly than at any other time in the last couple of decades. Most communities are small and do not have the ad valorem tax base to provide their own sewer system treatment plants. These communities cannot bond because they do not have a bondable base. The Duval delegation came up with a plan, though still in its embryonic stages, to have the legislature donate X amount of money that will enable these small communities to borrow the funding needed to enable them to install sewer treatment facilities and give those communities low or no interest loans. Whatever amount of funds that would be set aside would be bonded. One of the criteria for participating in the plan would be the understanding that any community accepting funding for sewer treatment plants would no longer be allowed to issue permits for septic tanks.

The Chair cited water re-use as a key component in addressing the issue and solving the problem. She indicated her belief that local governments should not grant permits for new, big developments like Nocatee unless the developer commits to water re-use. She said that government should be proactive.

Dr. Quinton White said that we should not be remiss in considering how man has impacted the environment, that the things that we do to the land such as reducing wetlands, have major impacts on the capacity of the river to absorb pollutants.

Council Member Lad Daniels, representing the Manufacturers Association, remarked on the positive impact that his members in industry are having on efforts to protect the environment, particularly the health of the river

and its tributaries.

Commissioner Lamb implored all sides to put an end to infighting, come together and work together for the common good.

Commissioner Anderson said that he thought that we cannot pick a number as a target and that pollutants were not the only problem plaguing the river; water temperature and other factors had to be weighed, as well.

Senator King moved that the Commission go on record supporting the higher standards for water quality and the lower number of acceptable amounts of nutrients in the river proposed by the Riverkeeper as our goal.

Commissioner Anderson and Council Member Copeland responded that we cannot set a numeric goal but encourage all parties to continue to work together and to do more.

Commissioner Pitman said that we have studied the issue enough that the Commission needed to make a statement. She indicated her support of Senator King's position.

Commissioner Bailey moved that Senator King's motion should be re-framed and Assistant General Counsel Greg Radlinski was asked to draft a proposed resolution expressing the Commission's goal of a TMDL that entailed having initiatives in place that include improved mandatory standards for septic tanks; an ordinance regulating the kind and use of fertilizers; better funding for storm water treatment; a water re-use ordinance and land use and zoning changes that would result in higher water quality standards and a lower number of nutrients permitted to be discharged in the river. The Commission voted unanimously in favor of the Bailey motion.

Craig McLane, St. Johns River Water Management District, remarked on the recently held St. Johns River Accord event. The Chair mentioned that she noticed that dredging and siltation were not mentioned in the accord.

On Pending Legislation, at the recommendation of Assistant General Counsel, Greg Radlinski, the Commission voted to recommend withdrawal of **Ordinance 2003-1132**, amending the Ordinance Code Changing Manatee Protection Motorboat Speed Zones from Year-Round to Seasonal.

The Commission voted to recommend approval of **Ordinance 2006-750**, Authorizing Execution of Sovereignty Submerged Lands Lease with Fla Bd of Trustees of the Internal Improvmt Trust Fund for Lands Adjacent to Metropolitan Park.

In Old Business, Sgt. Suber, Jacksonville Sheriff's Office, apprised the Commission of JSO's focus on the issue of derelict vessels. JSO is noticing owners that derelict vessels will be removed by JSO. JSO is working closely with the Florida Fish & Wildlife Commission. JSO will be needing funds. The Chair indicated that she would see if Florida Boater Improvement funds are available. Florida Fish & Wildlife and JSO will form a task force to identify owners, post notices and have derelict vessels removed. Commissioner Grey will be a part of this task force.

Sgt. Suber announced that JSO has applied to the U.S. Homeland Security Department for a grant for a facility at Metropolitan Park. The project entails an operational center for storage and a marine officers' docking facility, lifts for 6 vessels and floating docks. The grant is in the amount of \$4 million with a 25% City match.

Chief Mark Emerson, U.S. Coast Guard, reported to the Commission that Ortega Marker 3 is now the City's responsibility. The issue had been raised and discussed at the previous Commission meeting.

Office of General Counsel's William Crowe explained the issues surrounding the dispute that the water taxis have had with Hooter's ferrying paying guests on the river.

The next meeting of the Jacksonville Waterways Commission is scheduled for Thursday, September 7, 2006.

John J. Jackson
City Council Research Division
(904) 630-1729