

## MEMORANDUM

**TO:** Governing Board Members

**FROM:** Chip Merriam, Deputy Executive Director, Water Resources

**DATE:** December 13, 2007

**SUBJECT:** Central Florida Coordination Area



### **Background:**

At its August 2007 meeting, the Governing Board authorized staff to publish a Notice of Proposed Rule in the Florida Administrative Weekly to amend the District's water use permitting rules to address water supply issues in Central Florida. The Governing Boards of the Southwest Florida Water Management District (SW), and the St. Johns River Water Management District (SJR) also approved substantively identical rules. Each district published a Notice of Proposed Rule in the Florida Administrative Weekly on September 7, 2007. The three districts have consistently coordinated the rulemaking on the Central Florida Coordination Area (CFCA) so that all the new regulations will go into effect at the same time in the three water management districts to ensure equitable treatment of water use applicants in the area.

Substantially affected persons had until September 28, 2007, to submit a proposal for a lower cost regulatory alternative to the proposed rules which substantially accomplishes the objectives of the law being implemented. Lower cost regulatory alternatives were submitted to both South Florida Water Management District (SF) and SJR. Generally speaking, the proposals request that the affected person's water use be exempted from the proposed rules either on a geographic basis or based on the type of use. In response, as required by law, the two districts have each prepared an economic analysis, referred to in the statute as a statement of estimated regulatory cost (SERC). As part of the SERC contents, SF staff recommends the District not change the proposed CFCA rules to adopt the lower cost regulatory alternative submitted to SF by Latt Maxcy. A detailed explanation of staff's recommendation is included in the SERC.

The SJR will be presenting a SERC at its December Governing Board meeting for consideration, together with proposed rule changes which are designed to address the concerns presented in the lower cost regulatory alternative submitted to that district. In order to maintain consistency of the rules between the districts, the SF staff recommends the proposed rule changes included in this item. SW will also be presenting the proposed rule with the same changes at its December Governing Board meeting. These proposed rule changes clarify how, under the CFCA rules, an application to the district for the conversion of existing permitted groundwater withdrawals to other reasonable-beneficial uses after 2013 would

be considered. The language to clarify how such an application will be considered is included in the ***bold italicized*** text in the Exhibit to this item and, at the time that this memo was prepared, reads as follows:

If an application includes a request to change the use type, or the use within a use type, supplied by groundwater during the term of the permit, such change shall not trigger the requirements to develop and/or use supplemental water supply pursuant to subsections 3.2.1.F.2. or 3., and the corresponding permit duration provisions of subsection 1.7.2.2 and the CFCA permit condition described in subsection 5.3.F.4., provided: (a) the application does not propose an increase in groundwater withdrawal above that permitted for 2013; and (b) the groundwater drawdown is no greater than that associated with the use permitted for 2013. However, this subsection 3.2.1.F.5. shall not be construed to affect any condition in the existing permit regarding the development and/or use of supplemental water supply.

The Board will be advised if this language changes.

In addition, the Joint Administrative Procedures Committee, a legislative committee charged with reviewing all agencies' proposed rules, has requested minor edits to the proposed rules. These edits consist of changing a "can" to "shall", adding rule cross-references for clarity, and removing redundant language. These edits are included in the ***bold italicized*** text in the Exhibit to this item.

The last change is to add a paragraph for clarity specifying that when evaluating whether an applicant is using the lowest quality of water, the District will only consider those supplemental water supplies that may be permitted within the CFCA, not other types of alternative water supplies that maybe available but that would exacerbate groundwater resource conditions. The language shown in the Exhibit in bold italicized text is as follows:

In reviewing a consumptive use of groundwater in the CFCA under subsection 3.2 regarding utilization of lowest quality water sources, the District will confine its analysis of lower quality sources to those sources listed in the definition of Supplemental Water Supply in subsection 1.8.

Finally, the proposed rule amendments update the rule references to the Basis of Review for Water Use Permit Applications within the South Florida Water Management District to incorporate the latest version.

These changes will be presented by the SJR staff to the SJR Governing Board on December 11 and by the SW staff to the SW Governing Board on December 18. This Districts' staff will advise the Board if any modifications are made at

those Board meetings to the changes included in the Exhibit.

If all three districts approve the final changes this month, each district will publish a notice of change in the Florida Administrative Weekly. If no requests for hearings are filed in response to the notice, the three Districts will file the proposed rules for adoption with the Secretary of State.

**How this helps meet the District's 10-year Strategic Plan:** Amending District consumptive use permitting rules will help address water supply demands and develop supplemental water supply projects for water users in Central Florida.

**Funding Source:** There is no funding associated with this item.

**This Board item impacts what areas of the District, both resource areas and geography:** Both the Regulatory (Water Use Regulation) and Water Supply programs will be impacted by this item. The rules to be developed would apply to water use permit applications for withdrawals in those portions of Orange, Osceola, and Polk counties located in SFWMD.

**What concerns could this Board item raise?** Public water supply utilities and similar applicants in the Central Florida area may be concerned about limiting their groundwater allocations to 2013 demands in the near term future.

**Why should the Governing Board approve this item?** The proposed interim rules comprise a balanced regulatory approach for protecting the public interest against excessive stress on water resources of Central Florida, providing for allocations of available groundwater and expeditious development of supplemental water supply projects to avoid the adverse effects of competition as well as harm to the water resources. District staff recommends the Governing Board: 1) Adopt the amendments to Rules 40E-2.091, 40E-2.301, 40E-2.321, 40E-2.331, 40E-2.381, 40E-20.011, 40E-20.091, 40E-20.301, 40E-20.302, 40E-20.321, 40E-20.331 and 40E-20.381, F.A.C., and the "Basis of Review for Water Use Permit Applications within the South Florida Water Management District", to address permitting criteria applicable within the Central Florida Coordination Area, and to update references to the Basis of Review; and 2) Reject the proposal for lower cost regulatory alternative received by Matt Laxy Corp. in favor of the proposed rules.

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