

STAFF RESPONSES TO PRINCIPAL COMMENTS RECEIVED ON PROPOSED REGIONAL WATER AVAILABILITY RULE

Comment: Defer rule adoption until utilities have additional time to assess its implications.

Staff Response: Staff has scheduled a request for Governing Board authorization to initiate rulemaking in February 2007. The Governing Board will consider staff's recommendation and receive public comment on the February 1, 2007 rule draft at its February 15th monthly meeting.

Several comments from stakeholders have been addressed in the February 1, 2007 draft rule and meetings with several utilities that requested delays have been held to resolve their issues. The fundamental precepts of the proposed rule to limit allocations of water sources dependent on Everglades water have not changed since the April 2006 initiation of rule development as presented to the Governing Board. Although there have been five rule drafts over the last 10 months, these drafts were produced in response to stakeholder requests for clarification and additional language.

Comment: The proposed method for identifying the base condition water use for public water supply use class does not reflect the maximum historic use or permitted allocation.

Staff Response: In the rule draft posted on February 1, 2007, Staff has amended the January 4, 2007 draft to define the public water supply "base condition water use" as the maximum quantity of water withdrawn by the applicant consistent with the permit during any consecutive 12 month period during the five years preceding April 1, 2006. See Paragraph (3)(a) of Section 3.2.1E.

Comment: The rule needs to better explain the terms "offsets," "wet season water" and "terminated or reduced base condition water use."

Staff Response: In the January 4 rule draft specific language was added for each of these terms, including definitions and the types of evaluations necessary to receive an allocation based on these specific actions. See Paragraphs 5 and 6 of Section 3.2.1E.

Comment: Clarify whether additional water from the source made available through offsets implemented pursuant to a permit would be included in baseline condition water use.

Staff Response: Additional language was added to Paragraph (3) of Section 3.2.1.E. (right before paragraph (4)) to clarify that the base condition water use will include additional water made available via implementation of permitted offsets, alternative water supplies or terminated or reduced water uses. On the other hand, additional water made available by offsets, alternative sources or terminated or reduced uses implemented after April 6, 2006, and not required under a consumptive use permit existing as of April

1, 2006, can allocated over the base condition water use. See Paragraph (5) of Section 3.2.1.E. which lays out the factors for receiving an allocation.

Comment: The process to calculate available “wet season water” available for allocation needs to be clarified.

Staff Response: In order to address the concerns that wet season water flows necessary to implement the Comprehensive Everglades Restoration Plan, the North Palm Beach County Comprehensive Water Management Plan and the Acceler8 plans, will not be allocated to consumptive uses, language was added requiring the use of “best available information” at the time of the permit application to identify the available wet season water. In addition, to this end, a reference to the “36 year period of record” as the basis for determining water availability was deleted in recognition that the available period of record for modeling will change through time. See Paragraph (4)(e) of Section 3.2.1.E.

Comment: Identification of wet season water availability should include the needs of the foundational projects of CERP and Acceler8, such as “Modified Water Deliveries” and C-111 Project.

Staff Response: As such foundational projects were assumed in the baseline conditions of CERP and required for Everglades restoration and are assumed in the modeling scenario done to identify available water, they are accounted for in determining wet season water availability.

Comment: Confusion was expressed regarding language defining the “base condition water use for Diversion and Impoundments.

Staff Response: The January 4th draft rule included examples of the factors identified in Rule 2.7.2 for identifying diversion and impoundment system demands. This rule language reflected only a portion of the factors and caused confusion. Therefore, the February 1st draft has the incomplete list of factors deleted and the reference to the complete list of factors in Rule 2.7.2 remains. See Paragraph (3)(c) of Section 3.2.1.E.

Comment: Section 3.2.1E.(4) requires applicants identify any changes in location, timing and volume of the withdrawal from the Waterbodies. The factors to be considered under assessing implications of the “location” of the withdrawal are not clear.

Staff Response: Language was added to the February 1st draft to clarify the analysis regarding location should identify the specific areas within the Waterbodies affected by the proposed withdrawal. For example, the location of the withdrawal must be identified as to the specific Water Conservation Area (WCA 1, 2A, 2B, 3A, or 3B) affected and offsets, alternative sources or terminated or reduced uses must address the withdrawals from those specific areas.

Comment: What will be “published” in the Florida Law Weekly prior to rule adoption?

Staff Response: In addition to the substantive changes in Section 3.2.1.E regarding regional water availability, a “**publication draft**” of the rule with all of the required cross references and updated rule citations for routine administrative purposes has been posted on the District’s web site. The publication draft includes cross references to reflect the updated Consumptive Use Basis of Review as of 2007 (with the regional water availability rule) and cross references to the minimum flow and level recovery strategies for the Everglades and Loxahatchee River waterbodies within Chapter 40E-8.