

THE FULL TEXT OF THE PROPOSED RULE IS:

40E-2.091 Publications Incorporated by Reference.

The “Basis of Review for Water Use Permit Applications within the South Florida Water Management District – _____ ~~February 13, 2008~~”, is hereby published by reference and incorporated into this chapter. A current version of this document is available upon request.

Specific Authority 373.044, 373.113, 373.118, 373.171 FS. Law Implemented 373.042, 373.0421, 373.109, 373.196, 373.219, 373.223, 373.224, 373.229, 373.232, 373.233, 373.236, 373.239, 373.250 FS. History–New 9-3-81, Formerly 16K-2.035(1), Amended 2-24-85, 11-21-89, 1-4-93, 4-20-94, 11-26-95, 7-11-96, 4-9-97, 12-10-97, 9-10-01, 12-19-01, 8-1-02, 6-9-03, 8-31-03, 4-23-07, 9-13-07, 2-13-08, _____.

Basis of Review for Water Use Permit Applications within the SFWMD

3.2.1 Restricted Allocation Areas

G. The following restrictions shall apply when allocating surface water derived from the Lake Okeechobee Waterbody for consumptive use within the Lake Okeechobee Basin as defined in Section 1.7.3. This rule is a component of the recovery strategy for minimum flows and levels for Lake Okeechobee, as set forth in Chapter 40E-8, F.A.C., to address lower Lake management levels and storage under the U. S. Army Corps of Engineers’ interim Lake Okeechobee Regulation Schedule (LORS), adopted to protect the public health and safety (April 28, 2008). Compliance with this rule along with the other criteria contained in the Basis of Review implements the objectives of the District to protect the public health and safety, to prevent interference among legal users of Lake water, to be consistent with the MFL recovery strategy as defined in Rule 40E-8.421, F.A.C., and to ensure that water necessary for Everglades restoration is not allocated for consumptive use.

(1) The rule applies to applications for new projects, existing unpermitted projects, modifications to existing projects, and permit renewals for existing projects located within the Lake Okeechobee Basin as described

in Section 1.7.3, that propose to use surface water from the “Lake Okeechobee Waterbody,” defined as:

- (a) Lake Okeechobee as identified in Subsection 40E-8.021(12), F.A.C.; or
- (b) Integrated conveyance systems that are hydraulically connected to and receive water from Lake Okeechobee such as the Caloosahatchee River, the St Lucie Canal, or secondary canal systems that receive Lake Okeechobee water for water supply purposes via gravity flow or by pump.

This section does not apply to groundwater withdrawals such as withdrawals from wells, mining, and dewatering, or to projects that request to use a volume of water from the Lake Okeechobee Waterbody at or below the threshold contained in Subsection ~~paragraph~~ 40E-20.302(1)(a), F.A.C.

- (2) Except as otherwise provided in this section, an applicant must demonstrate the requested allocation will not cause a net increase in the volume of surface water withdrawn from the Lake Okeechobee Waterbody over the entire "base condition water use" as defined in Subsections ~~paragraphs~~ (a) through (d); ~~below but in no case shall exceed the withdrawal authorized to the applicant as of October 29, 2008.~~ In determining the base condition water use pursuant to paragraphs (a) through (d) below, the District shall consider and allow adjustments if the applicant demonstrates that such use is not representative of normal operations due to unanticipated conditions affecting the actual quantity of water withdrawn, such as extreme climatic conditions or equipment failure.

- (a) Public Water Supply Use Class: the maximum quantity of water withdrawn by the applicant from the Lake Okeechobee Waterbody during any consecutive twelve month period between April 1, 2001 and ~~January 1, October 29, 2008~~ consistent with the conditions of the existing permit. If a permit allocation existing on ~~January 1 October 29, 2008~~ contains an allocation based on a conversion of a

water treatment system, the base condition water use shall be increased to account for treatment losses of the new treatment plant as if the treatment system was operational during the above stated time interval;

(b) Irrigation Use Classes: the quantity of water calculated using Sections 2.3.and 3.9.1 ~~considering to meet demands for:~~

(i) The maximum number of acres actively irrigated by the applicant ~~between from~~ April 1, 2001 and ~~January 1, October 29~~ 2008 along with the associated crop type and irrigation method used. When determining the numbers of acres actively irrigated, data regarding historic crop plantings will be evaluated, however short term reductions in historic plantings caused by disease or poor market conditions are not to be used in determining the actively irrigated acreage; or

(ii) If the irrigation project, or a portion thereof, has been authorized but not yet constructed pursuant to the conditions of a surface water management (construction) or environmental resource (construction) permit or authorization existing on ~~January 1, October 29~~ 2008, the base condition water use will be calculated based on the number of acres and crop type identified in the environmental resource and water use permit or authorization in place as of ~~January 1 October 29~~, 2008;

(c) Diversion and Impoundment Use Class: the demands of the applicant calculated pursuant to Section 2.7.2 for the physical conditions of the diversion and impoundment system as of ~~January 1 October 29~~, 2008. In situations where historic uses were supplied by the diversion and impoundment project but not expressly identified or incorporated in the diversion and impoundment permit, the base case condition water use will be as calculated to

include the historic demands served by the diversion and impoundment project between April 1, 2001 and ~~January 1~~ ~~October 29~~, 2008.

- (d) Other Use Classes: the maximum quantities of water withdrawn by the applicant (annual and maximum month) between April 1, 2001 and ~~January 1~~ ~~October 29~~, 2008, consistent with the conditions of ~~the existing permit.~~
- (3) Applicants shall provide reasonable assurances that the ~~requested allocation proposed use~~ will not cause a net increase in the volume of surface water withdrawn from the Lake Okeechobee Waterbody over the entire base condition water use ~~increase the base condition water use from the Lake Okeechobee Waterbody. This Demonstration that the proposed use will not increase the base condition water use~~ is provided when the following criteria are met on a project by project scale as calculated pursuant to subsection 3.2.1.(G)(2), above:
- (a) Permit Renewals: ~~Those projects which timely seek re-issuance of a previous permit without modifications. The requested volume for permit renewal is no greater than the project's base condition water use calculated pursuant to subsection (2) above.~~
- (b) Modifications that ~~Maintain or Reduce the~~ Base Condition Water Use calculated pursuant to the existing permit: ~~The requested modification results in a reduction in the project's base condition water use. Examples of such modifications that could result in a reduction in the project's base condition water use include changes to withdrawal facilities, a reduction in irrigated acreage, change in crop type~~ **within the permitted use class**, or irrigation efficiency that results in an allocation that is equal to or less than the project's base condition water use calculated pursuant to the existing permit ~~lowers water demands~~ In the event that the modification results in a use that is less than the project's base condition water use ~~t~~The applicant will be required to calculate the reduction from ~~in~~ the

project's base condition water use associated with the requested modification.

(c) New Projects, Existing Unpermitted Projects, or Modifications Requesting Base Condition Water Use in Excess of the Amount Calculated Pursuant to the Previous Permit: Except for those uses as identified in subsection (4) as an incompatible use, allocations above or equal to the project's base condition water use as identified in subsection (2) above will be provided from the following sources:

(i) Certified Project Water. Water provided from an operational water resource development project, as defined in Section 373.019(22), Florida Statutes, that has been certified by the Governing Board for allocation to consumptive uses, as defined in Section 1.8;

(ii) Lake Okeechobee Waterbody Withdrawals Offset by Alternative Sources. An alternative source of water that is demonstrated to replace the volume, including timing, of water proposed to be withdrawn from the Lake Okeechobee Waterbody over the base condition water use. Examples of offsets include recharge provided by reclaimed water applied to provide recharge to the Waterbody in equal or greater amounts than the proposed increase over the base condition water use;

(iii) Alternative Water Supply. Water provided from a source not restricted under this section such as groundwater, reclaimed wastewater or stored stormwater; or

(iv) Unassigned, Terminated, or Reduced Base Condition Water Use.: The requested allocation is for available base condition water use calculated pursuant to subsection paragraph 3.2.1.(G)(2), above, that was not authorized by an existing permit (i.e. "unassigned"), permitted base

condition water use that has been made available through a permit which was terminated after January 1, 2008, or water made available pursuant to a modification made after January 1, 2008 which reduced the permitted base condition water use of an existing permit. In the event of competition for allocation of available base condition water use, those projects that seek an allocation of water in volumes equal to or less than that which was previously permitted to that project and/or used by that project shall be a positive consideration when determining which project best serves the public interest. Prior to February 28, 2010, the Governing Board ~~Water made available through the termination or reduction of other base condition water uses after October 29, 2008, unless the Governing Board determines that such retired or reduced base condition water use~~ reserves the right to restrict the re-allocation of ~~terminated base condition water use~~ if it determines that ~~such water~~ is demonstrated to improve the performance of an MFL waterbody under recovery in terms of shortening the frequency or duration of projected MFL violations or improve the performance of meeting a restoration target as defined in an approved District restoration plan or project. On or after February 28, 2010, the Governing Board reserves the right to restrict the re-allocation of unassigned, terminated, or reduced base condition water use, if it determines that such water is demonstrated to improve the performance of an MFL waterbody under recovery in terms of shortening the frequency or duration of projected MFL violations or improve the performance of meeting a restoration target as defined in an approved District restoration plan or project.

(4) Incompatible Use Type: Requested allocations for new public water supply uses that exceed the thresholds in Subsection ~~paragraph~~ 40E-20.302(1)(a), F.,A.C., or increases in existing uses above the project's base condition water use calculated pursuant to Subsection ~~paragraph~~ (2)(a), above, shall not be permitted from the Lake Okeechobee Waterbody. ~~Temporary R~~~~requested~~ for temporary increases over the project's base condition water use from the Lake Okeechobee Waterbody shall ~~may~~ be granted to accommodate increased demands during a reasonable time period while alternative sources are constructed provided all other consumptive use permit criteria are satisfied. The duration of the temporary increase shall be determined based on a construction schedule for the alternative source to be implemented with due diligence and defined in permit conditions. Additionally, the permit shall include requirements to reduce the allocation to the base condition water use in accordance with this construction schedule.

THE FULL TEXT OF THE PROPOSED RULE IS:

40E-8.421 Prevention and Recovery Strategies.

(1) No Change.

~~Harm Standards~~

(2) The Everglades, Lake Okeechobee, and the Caloosahatchee River.

(a) ~~As the effective date of this rule, September 10, 1001, T~~the Everglades, Lake Okeechobee and Caloosahatchee River have experienced or are projected to experience MFL violations. As a result, the LEC Plan and the LWC Plan contain approved recovery strategies, pursuant to Section 373.0421, F.S. Included in these recovery and prevention strategies is the CERP.

(b) MFLs ~~for many areas within~~ the Everglades, Lake Okeechobee, and the Caloosahatchee River, that are part of or served by the C&SF Project, will not be achieved immediately upon adoption of this rule largely because of the lack of adequate regional storage, including U.S. Army Corps of Engineers' regulation schedule effects, or ineffective water drainage and distribution infrastructure. Although not all locations within the Everglades are currently in violation of the proposed MFL, the Everglades, as a whole, is subject to a recovery strategy. The LEC Plan identifies the structural and non-structural remedies necessary for the recovery of MFL water bodies. These structural and non-structural remedies are also intended to restore the Everglades, Lake Okeechobee and the Caloosahatchee River above the MFLs, through Chapter 373, F.S., authorities of the District.

(c) The projected long-term restoration of flows and levels in the Everglades resulting from implementation of the LEC Plan and the CERP is documented in the LEC Plan, and are intended to more closely approximate “pre-drainage” conditions. The planned components include implementing consumptive use and water shortage programs, removing conveyance limitations, implementing revised C&SF Project operational programs, storing additional freshwater, reserving water for the protection of fish and wildlife, and developing alternative sources for water supply. These components will be implemented over the next 20 years, resulting in a phased restoration of the affected areas.

(d) The District, as the U.S. Army Corps of Engineers' local sponsor of the C&SF

Project, is charged with implementing the CERP, in accordance with the Water Resources Development Act of 2000 (WRDA), Title VI entitled “Comprehensive Everglades Restoration,” and in accordance with State law. Assurances regarding water availability for consumptive uses and protection of natural systems are set forth in WRDA, Chapter 373, F.S., CERP and the LEC Plan, which will be followed by the District in implementing this chapter. Additional quantities of water for both consumptive uses and the natural systems made available from the CERP and other water resource development projects will be documented and protected on a project basis. For project components implemented under CERP, the additional quantity, distribution and timing of delivery of water that is made available for the natural system for consumptive use, will be identified consistent with purposes of the CERP. Under State law, water reservations and water allocations to consumptive uses will be utilized to protect water availability for the intended purposes.

(e) Lake Okeechobee. Under implementation of the Water Supply and Environment (WSE) lake regulation schedule assumptions, the Lake Okeechobee MFL was not projected to be violated and a MFL prevention strategy was adopted. However, due to changes in the Lake Okeechobee Regulation Schedule (LORS), which received final approval in April 2008, the Lake MFL is projected to be violated and a MFL recovery strategy is necessary. This recovery strategy will remain in effect until the MFL criteria is met pursuant to 373.0421, F.S. The Lake Okeechobee MFL recovery strategy shall consist of four components, as fully described in the LEC Regional Water Supply Plan Appendix H, as updated in October 2008. These components consist of:

- i. environmental enhancement projects to be implemented during extreme low Lake stages,
- ii. regulatory constraints on consumptive use of Lake water,
- iii. water shortage restrictions as described in Chapter 40E-22, F.A.C., and
- iv. capital projects that improve storage capacity both within and adjacent to the Lake.

~~(3) Lake Okeechobee. The LEC Plan contains an approved prevention strategy for Lake Okeechobee pursuant to Section 373.0421, F.S. The prevention strategy consists of implementing the District’s water shortage plan, including supply side management, as~~

~~simulted in the LEC Plan, and constructing and operating water supply and resource development projects.~~

(~~3~~4) Biscayne Aquifer. No Change.

(~~4~~5) Lower West Coast Aquifers. No Change.

(~~5~~6) St. Lucie River and Estuary. No Change.

(~~6~~7) Northwest Fork of the Loxahatchee River Recovery Strategy: Purpose and Intent. No Change.

(~~7~~8) Lake Istokpoga. No change.

(~~8~~9) Florida Bay. No Change.

Specific Authority §§ 9, 10 P.L. 83-358, 373.044, 373.113, 373.171 FS. Law Implemented 373.016, 373.036, 373.0361, 373.042, 373.0421, 373.175, 373.216, 373.219, 373.223, 373.246 FS. History—New 9-10-01, Amended 11-11-02, 4-1-03, 1-19-06, 12-12-06, 4-23-07, _____.

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See Proposed Rule 40E-2.091, F.A.C., herein, for amendments to Subsection 2.3.1 (G) Basis of Review for Water Use Permit Applications within the South Florida Water Management District