

# Chapter 3: 2010 Priority List and Schedule for Minimum Flows and Levels, Water Reservations and Restricted Allocation Area Rules

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## INTRODUCTION

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In addition to the wetland protection criteria contained in the Basis of Review for Water Use (SFWMD, 2009), the South Florida Water Management District (SFWMD or District) uses three primary mechanisms to protect water supplies for natural systems: (1) Minimum Flows and Levels (MFLs), (2) Water Reservations, and (3) Restricted Allocation Area rules. This chapter provides a summary of current rules in effect during 2009 and the priorities and schedule for developing new rules planned for 2010, 2011, 2012, and 2013.

Section 373.042(2), Florida Statutes (F.S.), requires each of the five water management districts to provide the Florida Department of Environmental Protection (FDEP) with an annual updated Minimum Flow and Level (MFL) priority list. In accordance with this requirement, the SFWMD provides two lists to the FDEP. The first list identifies the specific water bodies where MFL rules will be established, while the second specifies those water bodies where Water Reservations and Restricted Allocation Area rules will be developed for the purpose of protecting natural system water from future consumptive use allocations. Both priority lists also consider additional information and comments provided by the FDEP and include a schedule with the name of each water body and the year in which the MFL, Water Reservation, or Restricted Allocation Area rule is anticipated to be established.

MFLs provide technical criteria that are important management tools used by the District. Meeting MFLs protects major water bodies from significant harm due to reduction in water levels or flows that might be caused by a consumptive use withdrawal. MFL criteria provide a basis for defining the point at which additional withdrawals will result in significant harm to water resources or ecology of an area. Protection of non-consumptive uses may be also considered and provided for when establishing MFLs (Section 373.042, F.S.). A baseline condition for the protected resource functions must be identified through consideration of changes and structural alterations in the hydrologic system [Section 373.042(1), F.S.]. If it is determined that water flows or levels are presently below the relevant MFL, or will fall below an established MFL within the next 20 years, then the District must develop and implement a recovery or prevention strategy [Section 373.0421(2), F.S.]. MFL recovery or prevention strategies are presented in the regional water supply plans for the District's four planning areas, and MFL and Water Reservation activities are also discussed in Chapter 5A of this volume.

To date, MFL criteria have been adopted for 12 water bodies within the SFWMD including eight water bodies in 2001, two in 2002, and two in 2006. These water bodies include Lake Okeechobee, four areas of the Everglades, the northern portion of the Biscayne aquifer, the Lower West Coast Aquifer system encompassing three semi-confined aquifers, Caloosahatchee River and Estuary, St. Lucie River and Estuary, the Northwest Fork of the Loxahatchee River and Estuary, Lake Istokpoga, and Florida Bay (**Figure 3-1**).



The District has additional authority, under Section 373.223(4), F.S., to “...reserve from use by permit applicants water, in such locations and quantities and for such seasons of the year, as may be required for protection of fish and wildlife or the public health and safety.” Whereas the MFL criteria are used to prevent significant harm from occurring to water resources, Water Reservations provide a different standard, i.e., to protect fish and wildlife resources.

The District is developing Water Reservation rules based on the evaluation of existing water availability and consideration of future water that may be made available by the Comprehensive Everglades Restoration Plan (CERP) and other restoration projects. The District is required to use its reservation or allocation authority to protect water for the natural system identified by CERP projects prior to executing an agreement to construct these projects with the U.S. Army Corps of Engineers, consistent with Section 373.470 (3)(c), F.S. The District’s first Water Reservation rule was adopted for the Picayune Strand and Fakahatchee Estuary in 2009, and new rules are planned to be adopted in 2010 for (1) the Kissimmee River and Chain of Lakes, and (2) the North Fork of the St. Lucie River in support of the CERP Indian River Lagoon – South Project (**Figure 3-1**).

The District also applies a third type of regulatory mechanism, known as Restricted Allocation Area rules, for protecting natural systems from consumptive uses. These rules are defined in Section 373.223(1), F.S., which specifies the three-prong test used for issuing Consumptive Use Permits. The Restricted Allocation Area rules are outlined in Section 3.2.1 of the Basis of Review for Water Use (SWFMD, 2009). One of these rules is the Regional Water Availability rule, which was adopted by the District’s Governing Board on February 15, 2007. This rule limits the allocation of water from the Everglades and the Loxahatchee River Watershed (**Figure 3-1**). The rule protects water resources by limiting the availability of water for consumptive use allocations. Another Restricted Allocation Area rule for the Lake Okeechobee Service Area was adopted in 2008. This includes withdrawals from Lake Okeechobee and the C-43 and C-44 canals, and Caloosahatchee and St. Lucie canals, respectively (**Figure 3-1**). Water bodies covered by these two Restricted Allocation Area rules follow.

#### **Loxahatchee River Watershed**

- Northwest Fork of the Loxahatchee River
- Kitching Creek
- Cypress Creek
- Hobe Grove Ditch
- Moonshine Creek
- Jonathon Dickinson State Park
- DuPuis Reserve
- J.W. Corbett Wildlife Management Area
- Pal Mar
- Loxahatchee Slough (C-14, C-18, C-18W, and C-18E canals)
- Grassy Waters Preserve
- Riverbend Park
- L-8 Reservoir
- L-8 Canal (from C-51 to L-8 Tieback Canal)
- M Canal
- L-8 Tieback Canal

### Everglades

- Water Conservation Area 1 (Arthur R. Marshall Loxahatchee National Wildlife Refuge)
- Water Conservation Areas 2A and 2B
- Water Conservation Areas 3A and 3B
- Everglades National Park
- Holey Land Wildlife Management Area
- Rotenberger Wildlife Management Area

### Lake Okeechobee

- Lake Okeechobee
- Integrated conveyance systems hydraulically connected to the Caloosahatchee River, the St. Lucie Canal, or secondary canal systems that receive water from Lake Okeechobee

Further details on MFLs, Water Reservations, and Restricted Allocation Area rules are available on the District's web site at [www.sfwmd.gov/watersupply](http://www.sfwmd.gov/watersupply). Related rule development and peer-review activities are presented on the District's web site at [www.sfwmd.gov/webboards](http://www.sfwmd.gov/webboards). Additional information on Restricted Allocation Area rules is detailed in Section 3.2.1 of the Basis of Review for Water Use.

## **RULE DEVELOPMENT PROCEDURES**

Rulemaking is conducted consistent with the procedures in Chapter 120.54, F.S. However, due to the nature of these rules and their potential effect on consumptive uses, Water Reservations and MFL rules often rely upon developing technical information to support the rule, which is presented in a draft technical document and then peer-reviewed. The three major steps of the rule development process are:

- **Step 1.** Compile into a report the relevant science linking water resource functions that are to be protected by regulation and the water needs associated with those functions.
- **Step 2.** Conduct scientific peer review of the information available to determine if the linkage between natural resource functions and water necessary to protect those functions is scientifically sound.
- **Step 3.** Complete rule development where data are sufficient. If peer review concludes that data are insufficient, conduct additional research, and repeat peer-review process.

The District also engages the public and other stakeholders through workshops, dedicated web pages, notifications to interested parties, and updates at District Governing Board and Water Resource Advisory Committee meetings for additional input.

## 2009 ACCOMPLISHMENTS

Water Reservation rules were established for the Picayune Strand and Fakahatchee Estuary in July 2009. Water Reservation rule development for the Kissimmee River and Upper Chain of Lakes and the North Fork of the St. Lucie River is under way, and independent, scientific peer reviews for both areas were completed in 2009. Additionally, an independent, scientific peer review on available information for Biscayne Bay was completed in October 2008. The peer-review panel's final report, dated November 13, 2008, will be used to evaluate rule development options in 2010.

## 2010 PRIORITY LIST

The District's priorities outlined in the 2010 list are to:

- Complete rule development for the Kissimmee River and Chain of Lakes Water Reservation in 2010. Water bodies to be addressed in this rulemaking are:
  - Kissimmee River and its floodplain
  - Lakes Kissimmee, Cypress, and Hatchineha
  - Lake Tohopekaliga
  - East Lake Tohopekaliga, Fell's Cove, Lake Ajay
  - Lakes Hart and Mary Jane
  - Lakes Myrtle, Joel, and Preston
  - Alligator Chain of Lakes (Alligator, Brick, Lizzie, Coon, Center, and Trout)
  - Lake Gentry
- Complete rulemaking for the North Fork of the St. Lucie River Water Reservation in 2010 to support the CERP Indian River Lagoon – South Project.
- Initiate rule development for the Caloosahatchee Estuary in 2009 and adopt a Water Reservation rule in 2011 to support the CERP Caloosahatchee (C-43) West Basin Storage Reservoir Project.
- Initiate rule development for Biscayne Bay in 2010 to support the CERP Biscayne Bay Coastal Wetlands Project.
- Apply the Restricted Allocation Area rule (effective April 23, 2007) to the C-111 Western Spreader Canal, Site 1 Impoundment (Fran Reich Preserve), and Broward County Water Preserve Areas to support CERP projects in these three areas.
- Compile information and conduct the necessary studies to support development of MFL rules in 2012 for Estero Bay and 2013 for Rookery Bay.

## GOVERNING BOARD ADOPTION AND STATE APPROVAL

The 2010 MFL Priority List and Schedule was adopted by the District's Governing Board on October 15, 2009, and subsequently was submitted to the FDEP for review and approval. Concurrently, a second list containing other rule development activities that protect natural system water from allocation — specifically Water Reservations and Restricted Allocation Area rules — was presented to the Governing Board.

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## LITERATURE CITED

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SFWMD. 2009. Basis of Review for Water Use. South Florida Water Management District, West Palm Beach, FL.