

Notice of Proposed Rule

WATER MANAGEMENT DISTRICTS South Florida Water Management District

RULE NO: RULE TITLE

[40E-10.021](#): Definitions

[40E-10.031](#): Water Reservations

[40E-10.041](#): Water Reservation Areas: Lower West Coast Planning Area

[40E-10.051](#): Water Reservation Areas: Upper East Coast Planning Area

PURPOSE AND EFFECT: To assure water necessary for the protection of fish and wildlife in the North Fork of the St. Lucie River as part of the Comprehensive Everglades Restoration Plan for the Indian River Lagoon-South project.

SUMMARY: The proposed rule amendments establish criteria to implement a water reservation for the North Fork of the St. Lucie River to protect Comprehensive Everglades Restoration Plan project water needed for protection of fish and wildlife within the North Fork of the St. Lucie River. The proposed amendments also make changes to clarify that rules pertaining to the water reservation for the Picayune Strand and Fakahatchee Estuary are found in a specific section of Chapter 40E-10, and that rules pertaining to the water reservation for the North Fork of the St. Lucie Estuary are found in a separate section of Chapter 40E-10, F.A.C.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: A Statement of Estimated Regulatory Costs (SERC) has been prepared in support of rule making for a water reservation for the North Fork of the St. Lucie River. This reservation of water is prospective in nature, meaning that the water to be regulated is not available until certain antecedent conditions occur. This fact impacts the outcome of the analysis required by the SERC as summarized below. This SERC has been prepared in accordance with the requirements of Section 120.541(2), F.S. Following are each of the statutory requirements that are required to be evaluated and a summary of the conclusions reached:

(a) A good faith estimate of the number of individuals and entities likely to be required to comply with the rule, together with a general description of the types of individuals likely to be affected by the rule.

This proposed rule will be applicable to all water use types regulated under District consumptive use and general permit rules (40E-2 and 20 F.A.C.) seeking to use surface water that contributes to the dry season flows over the Gordy Road Structure once any one or all of the Comprehensive Everglades Restoration Plan's C-23/C-24 North and South Reservoirs and STA Project are operational. The use types affected by this rule include dewatering, golf course irrigation, agricultural irrigation, nursery irrigation, water livestock, landscape irrigation, commercial industrial use, public water supply, aquaculture, power generation and recreational water use.

It is not possible to fully identify the number of individuals or entities that ultimately will have to comply with the proposed rule at this time because the water to be reserved will become available in the future when project components are determined to be operational. The SERC does identify the number of presently existing legal users that are likely required to have to comply with the rule at page 10 of the SERC.

(b) A good faith estimate of the cost to the agency, and to any other state and local government entities, of implementing and enforcing the proposed rule, and any anticipated effect on state or local revenues.

Because the proposed rules do not contain any requirements that will result in the need for new or additional permit analysis, impose any new or additional conditions on use, or otherwise restrict the allocation of surface or groundwater until the Governing Board determines that any or all project component(s) are operational and new rules and criteria are effective, there are no increased costs associated with the implement or enforcement of this proposed rule to the District, presently existing legal users, permit applicants or other state or local government

agencies.

(c) A good faith estimate of the transactional costs likely to be incurred by individuals and entities, including local government entities, required to comply with the requirements of the rule. As used in this paragraph, “transactional costs” are direct costs that are readily ascertainable based upon standard business practices, and include filing fees, the cost of obtaining a license, the cost of equipment required to be installed or used or procedures required to be employed in complying with the rule, additional operating costs incurred, and the cost of monitoring and reporting. Because the proposed rules do not contain any requirements that will result in the need for new or additional permit analysis, impose any new or additional conditions on use, or otherwise restrict the allocation of surface or groundwater until the Governing Board determines that any or all project component(s) are operational and new rules and criteria are effective, there are no specific requirements that would result in the need for an individual or entity to incur transactional costs.

(d) An analysis of the impact on small businesses as defined by Section 288.703, F.S., and an analysis of the impact on small counties and small cities as defined by Section 120.52, F.S.

Because the proposed rules do not contain any requirements that will result in the need for new or additional permit analysis, impose any new or additional conditions on use, or otherwise restrict the allocation of surface or groundwater until the Governing Board determines that any or all project component(s) are operational and new rules and criteria are effective, there are no specific requirements that would impact a small business, small county or small city.

(e) Any additional information that the agency determines may be useful. No additional information was determined to be necessary.

(f) In the statement or revised statement, whichever applies, a description of any good faith written proposal submitted under paragraph (1)(a) and either a statement adopting the alternative or a statement of the reasons for rejecting the alternative in favor of the proposed rule.

None received to date. In the event a lower cost alternative is submitted, this SERC will be amended to address the alternatives.

Any person who wishes to provide information regarding a statement of estimated regulatory costs, or provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

SPECIFIC AUTHORITY: [373.044](#), [373.113](#), [373.17 FS](#).

LAW IMPLEMENTED: [373.016](#), [373.026](#), [373.036](#), [373.1501](#), [373.1502](#), [373.219](#), [373.223](#), [373.4592](#), [373.4595](#), [373.470 FS](#).

A HEARING WILL BE HELD AT THE DATE, TIME AND PLACE SHOWN BELOW:

DATE AND TIME: January 14, 2010, 9:00 a.m.

PLACE: Village of Key Biscayne, Village Chambers, 88 West McIntyre Street, Key Biscayne, FL 33149

Pursuant to the provisions of the Americans with Disabilities Act, any person requiring special accommodations to participate in this workshop/meeting is asked to advise the agency at least 5 days before the workshop/meeting by contacting: South Florida Water Management District Clerk, (800)432-2045, next. 2087 or (561)682-2087. If you are hearing or speech impaired, please contact the agency using the Florida Relay Service, 1(800)955-8771 (TDD) or 1(800)955-8770 (Voice).

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Scott Burns, Chief Scientist, South Florida Water Management District, P. O. Box 24680, West Palm Beach, FL 33416, (800)432-2045, next 6544 or (561)682-6544, email: sburns@sfwmd.gov, Beth Lewis, Senior Specialist Attorney, South Florida Water Management District, P. O. Box 24680, West Palm Beach, FL 33416, (800)432-2045, ext 6343 or (561)682-6343, email: belewis@sfwmd.gov, Brenda Mills, Lead Planner, South Florida Water Management District, P. O. Box

24680, West Palm Beach, FL 33416, (800)432-2045, ext 6536 or (561)682-6536, email: bmills@sfwmd.gov. For procedural questions contact Jan Sluth, Paralegal, South Florida Water Management District, P. O. Box 24680, West Palm Beach, FL 33416, (800)432-2045, ext 6299 or (561)682-6299, email: jsluth@sfwmd.gov

THE FULL TEXT OF THE PROPOSED RULE IS:

40E-10.021 Definitions.

(1) through (2) No change.

(3) North Fork of the St. Lucie River – The area that extends from the Gordy Road structure (state plane coordinates, x851212.831, y1116105.7470), to the confluence of the North Fork of the St. Lucie River and the C-24 canal (state plane coordinates, x873,712.20, y1064,390.41) as depicted in Appendix 3, Figure 3-1.

Rulemaking Authority 373.044, 373.113, 373.171 FS. Law Implemented 373.016, 373.026, 373.036, 373.1501, 373.1502, 373.219, 373.223, 373.4592, 373.4595, 373.470 FS. History–New 7-2-09, Amended _____.

40E-10.031 Water Reservations Implementation.

(1) No change.

~~(2) Reservations contained in Rule 40E-10.041, F.A.C., shall be reviewed in light of changed conditions or new information by 2014.~~

(2) Water reserved for the protection of fish and wildlife contained within the Picayune Strand and Fakahatchee Estuary is defined in subsections 40E-10.041(1)-(2), F.A.C.

(3) Water reserved for the protection of fish and wildlife contained within the North Fork of the St. Lucie River is defined in subsection 40E-10.051(1), F.A.C.

Rulemaking Authority 373.044, 373.113, 373.171 FS. Law Implemented 373.016, 373.026, 373.036, 373.1501, 373.1502, 373.219, 373.223, 373.4592, 373.4595, 373.470 FS. History–New 7-2-09, Amended _____.

40E-10.041 Water Reservation Areas: Lower West Coast Planning Area.

(1) through (2) No change.

(3) Reservations contained in this section shall be reviewed in light of changed conditions or new information by December 31, 2014.

Rulemaking Authority 373.044, 373.113, 373.171 FS. Law Implemented 373.016, 373.026, 373.036, 373.1501, 373.1502, 373.219, 373.223, 373.4592, 373.4595, 373.470 FS. History–New 7-2-09, Amended _____.

40E-10.051 Water Reservation Areas: Upper East Coast Planning Area.

(1) North Fork of the St. Lucie River, as defined in subsection 40E-10.021(3), F.A.C.:

(2) Surface waters up to and including the mean monthly flow of 130 cubic feet per second flowing over the Gordy Road Structure from November 1st through May 31st; see Appendix 3, Figure 3-2; are reserved from allocation. The water reserved under this Rule will be available for fish and wildlife upon formal determination of the Governing Board, pursuant to state and federal law, that any one or all of the Comprehensive Everglades Restoration Plan's C-23/C-24 North and South Reservoirs and STA Project are operational.

(3) Reservations contained in this Rule and the criteria contained in subsection 3.11.2 of the "Basis of Review for Water Use Permit Applications within the South Florida Water Management District," incorporated by reference in Rule 40E-2.091, F.A.C., shall be revised pursuant to Section 373.223(4), F.S., in light of changed conditions or new information and concurrent with the approval specified in paragraph (1)(a), above.

Notwithstanding the above, presently existing legal uses for the duration of a permit existing on [effective date] are determined to be not contrary to the public interest pursuant to Section 373.223(4), F.S.

Rulemaking Authority 373.044, 373.113, 373.171 FS. Law Implemented 373.016, 373.026, 373.036, 373.1501, 373.1502, 373.219, 373.223, 373.4592, 373.4595, 373.470 FS. History– New .

APPENDIX 1 TO CHAPTER 40E-10

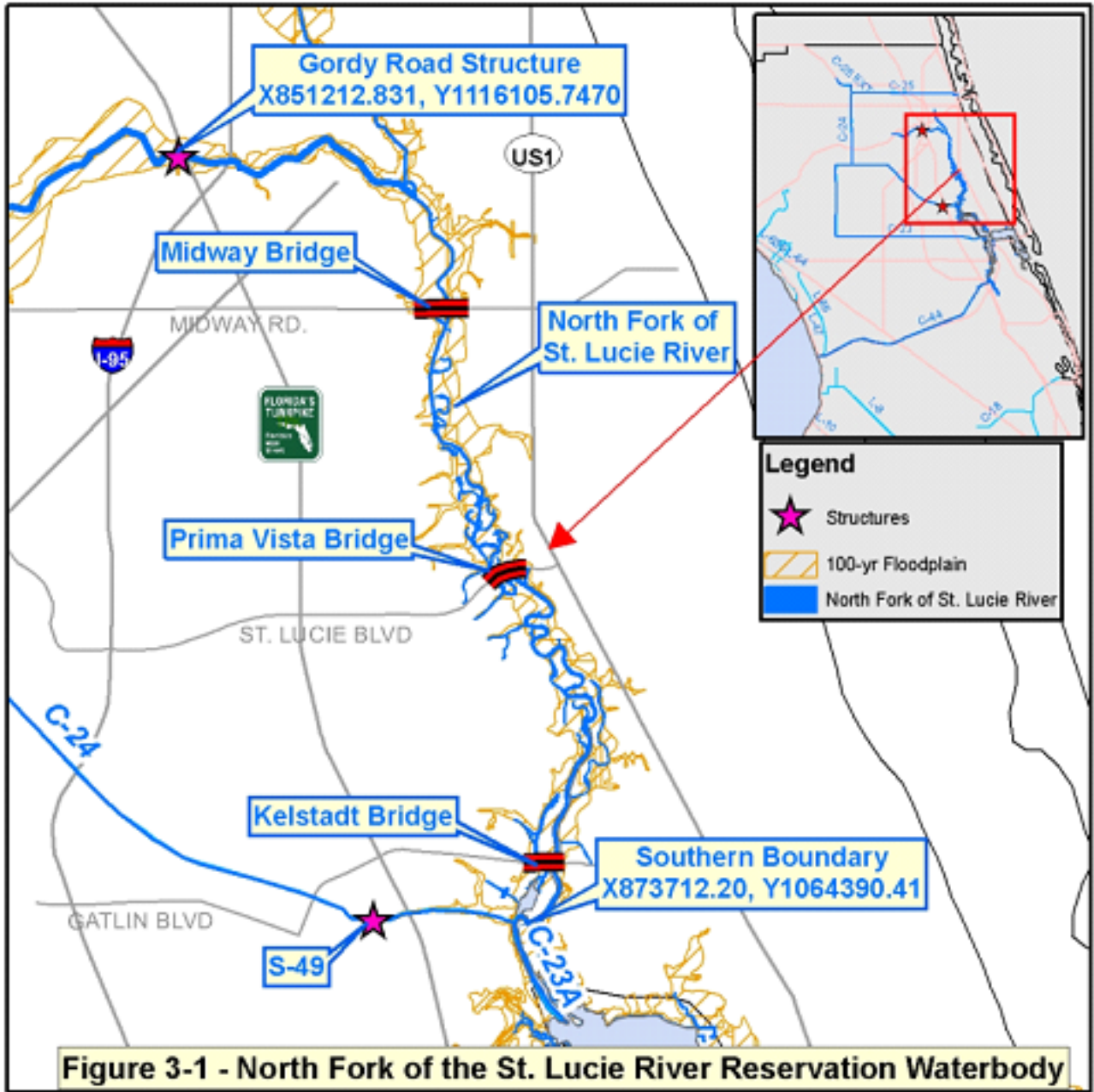
No change.

APPENDIX 2 TO CHAPTER 40E-10

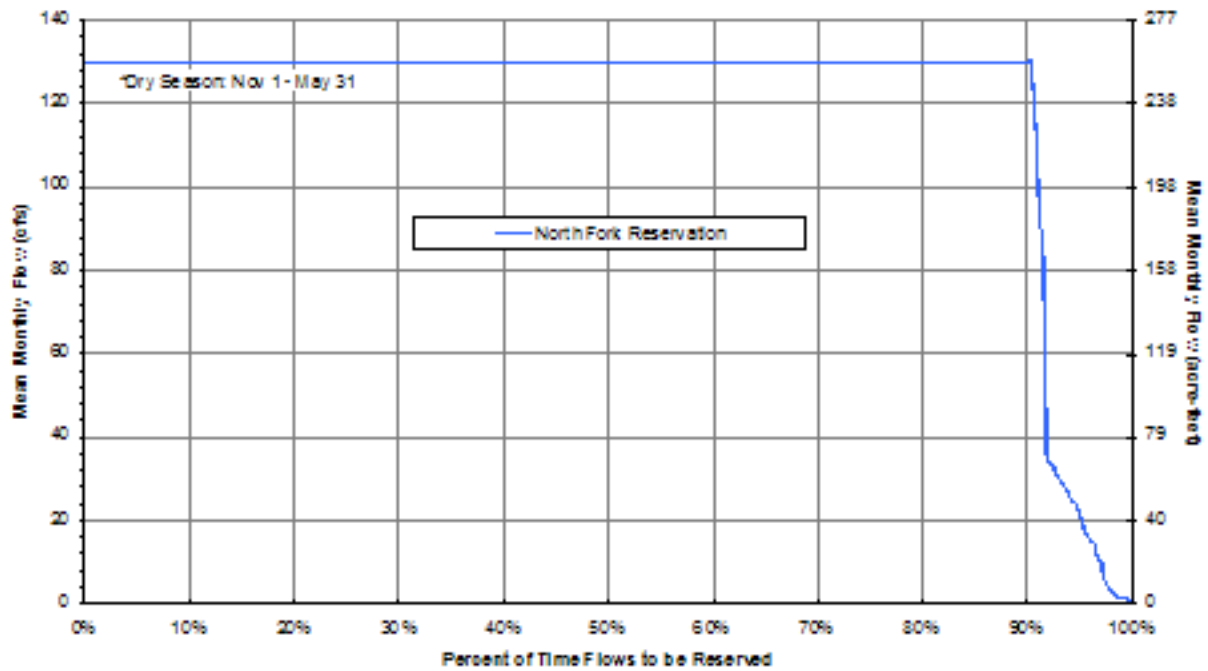
Figures

Figures 1, 2, 3.A through 3.C, 4.A through 4.C, 5.A through 5.C, 6.A through 6.C, 7.A through 7.C, 8.A through 8.C, 9.A through 9.C, 10.A through 10.C No change.

Appendix 3: Upper East Coast Reservation Water Bodies



Volume Reservation: Mean Monthly Flows to be Reserved for Protection of Fish & Wildlife of the North Fork via Ten Mile Creek - Dry Season (Nov 1 - May 31)



NAME OF PERSON ORIGINATING PROPOSED RULE: Scott Burns, Chief Scientist

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: South Florida Water Management District Governing Board

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: November 13, 2009

DATE NOTICES OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: April 10, 2009 and October 16, 2009