

Notice of Proposed Rule

WATER MANAGEMENT DISTRICTS**Southwest Florida Water Management District**

RULE NO: RULE TITLE

[40D-2.091](#): Publications and Forms Incorporated by Reference[40D-2.301](#): Conditions for Issuance of Permits[40D-2.801](#): Water-Use Caution Areas

PURPOSE AND EFFECT: To amend Chapter 40D-2, F.A.C., and Part B, Basis of Review, of the Water Use Permit Information Manual to set forth the permitting criteria applicable to new and renewal water use permit applications and water use permittees that will be governed by the Minimum Flows and Levels Recovery Strategy and Environmental Resources Recovery Plan for the Northern Tampa Bay Water Use Caution Area (the "Comprehensive Plan"). The Comprehensive Plan is encompassed within rule amendments to Chapter 40D-80, F.A.C. that are simultaneously with this rulemaking being proposed for adoption.

SUMMARY: The proposed amendments revise the Conditions for Issuance of Permits, Part B, Basis of Review, of the Water Use Permit Information Manual, and the Northern Tampa Bay Water Use Caution Area ("NTBWUCA") provisions to reflect the permitting criteria for wetlands, lakes, streams, springs, saltwater intrusion/aquifers levels and minimum flows and levels applicable to water withdrawals within the Northern Tampa Bay Water Use Caution Area through the year 2020 that will be governed by the Comprehensive Plan. The revised permitting criteria, together with all other permitting criteria, if satisfied, allows for the renewal of Tampa Bay Water's Central System Facilities that are currently permitted pursuant to rules that will expire in December 2010. The Comprehensive Plan is encompassed within rule amendments to Chapter 40D-80, F.A.C., that are simultaneously with this rulemaking being proposed for adoption. The amendments also clarify the purpose for which a water use caution area is established.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: The proposed rule revisions to Chapters 40D-2 and 40D-80, F.A.C., establish Minimum Flow and Level recovery and prevention strategy elements and other necessary rule elements to address unacceptable adverse environmental impacts and Minimum Flows and Level impacts in the Northern Tampa Bay Water Use Caution Area. These revisions continue existing requirements for applicants and existing permittees, except as to certain provisions for renewal of Tampa Bay Water's Consolidated Permit for the Central System Facilities. Tampa Bay Water is currently permitted for the Central System Facilities pursuant to the terms of the Partnership Agreement and related rules which expire on December 31, 2010. The amendments impose no additional requirements to applicants or existing water use permittees other than Tampa Bay Water. A number of the requirements for Tampa Bay Water currently exist as part of the Partnership Agreement or as permit or rule conditions, and therefore, impose no additional cost. New assessment and reporting requirements related to stream and spring flow impacts may require additional monitoring sites, input and analysis of monitoring data, and possibly revisions to the Optimized Regional Operations Plan. For the District, evaluation, processing and monitoring of available information to assess the impacts remaining in 2020 may create a one-time additional cost. Small businesses, including those that may be applicants or existing permittees, are not expected to incur costs resulting from the proposed rule. No changes in state or local government revenues are anticipated.

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](#), [373.118](#), [373.171 FS](#).

LAW IMPLEMENTED: [373.036](#), [373.0361](#), [373.042](#), [373.0421](#), [373.079\(4\)\(a\)](#), [373.083\(5\)](#), [373.0831](#), [373.116](#), [373.117](#), [373.118](#), [373.149](#), [373.171](#), [373.196](#), [373.1963](#), [373.216](#), [373.217](#), [373.219](#), [373.223](#), [373.227](#), [373.228](#), [373.229](#), [373.2295](#), [373.239](#), [373.243](#), [373.250 FS](#).

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE SCHEDULED AND ANNOUNCED IN FAW.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Annette Zielinski, Sr.

Administrative Assistant, Office of General Counsel, 2379 Broad Street, Brooksville, FL 34604-6899, (352)796-7211, extension 4651

THE FULL TEXT OF THE PROPOSED RULE IS:

40D-2.091 Publications Incorporated by Reference.

(1) The following publications are hereby incorporated by reference into this Chapter, and are available from the District's website at www.watermatters.org or from the District upon request:

(a) Water Use Permit Information Manual Part B, "Basis of Review" (_____) (~~41-2-09~~), and:

(b) No change.

(2) No change.

Rulemaking Authority 373.044, 373.113, 373.118, 373.171 FS. Law Implemented 373.036, 373.0361, 373.042, 373.0421, 373.079(4)(a), 373.085(5), 373.0831, 373.116, 373.117, 373.118, 373.149, 373.171, 373.1963, 373.216, 373.219, 373.223, 373.229, 373.239, 373.243 FS. History—New 10-1-89, Amended 11-15-90, 2-10-93, 3-30-93, 7-29-93, 4-11-94, 7-15-98, 7-28-98, 7-22-99, 12-2-99, 8-3-00, 9-3-00, 4-18-01, 4-14-02, 9-26-02, 1-1-03, 2-1-05, 10-19-05, 1-1-07, 8-23-07, 10-1-07, 10-22-07, 11-25-07, 12-24-07, 2-13-08, 2-18-08, 4-7-08, 5-12-08, 7-20-08, 9-10-08, 12-30-08, 1-20-09, 3-26-09, 7-1-09, 8-30-09, 11-2-09, _____.

40D-2.301 Conditions for Issuance of Permits.

(1) In order to obtain a Water Use Permit, an Applicant must demonstrate that the water use is reasonable and beneficial, is in the public interest, and will not interfere with any existing legal use of water, by providing reasonable assurances, on both an individual and a cumulative basis, that the water use:

(a) Is necessary to fulfill a certain reasonable demand;

(b) Will not cause quantity or quality changes that adversely impact the water resources, including both surface and ground waters;

(c) Will comply with the provisions of 4.2 of the Basis of Review described in Rule 40D-2.091, F.A.C. regarding ~~not cause~~ adverse ~~environmental~~ impacts to wetlands, lakes, streams, estuaries, fish and wildlife or other natural resources;

(d) Will not interfere with a reservation of water as set forth in Rule 40D-2.302, F.A.C.

(e) Will comply with the provisions of 4.3 of the Basis of Review described in Rule 40D-2.091, F.A.C., regarding minimum flows and levels;

(f) Will utilize the lowest water quality the Applicant has the ability to use, provided that its use does not interfere with the recovery of a water body to its established MFL and it is not a source that is either currently or projected to be adversely impacted;

(g) Will comply with the provisions of 4.5 of the Basis of Review described in Rule 40D-2.091, F.A.C. regarding ~~not significantly induce~~ saline water intrusion;

(h) Will not cause pollution of the aquifer;

(i) Will not adversely impact offsite land uses existing at the time of the application;

(j) Will not adversely impact an existing legal withdrawal;

(k) Will incorporate water conservation measures;

(l) Will incorporate use of Alternative Water Supplies to the greatest extent practicable;

(m) Will not cause water to go to waste; and

(n) Will not otherwise be harmful to the water resources within the District.

(2) through (3) No change.

Rulemaking ~~Specific~~ Authority 373.044, 373.113, 373.171 FS. Law Implemented 373.219, 373.223, 373.229 FS. History—Readopted 10-5-74, Amended 12-31-74, 2-6-78, 7-5-78, Formerly 16J-2.11, 16J-2.111, Amended 1-25-81, 10-1-89, 2-10-93, 8-3-00, 4-14-02, 1-1-07, _____.

40D-2.801 Water Use Caution Areas.

(1) When the Governing Board determines that regional action is necessary to address cumulative water withdrawals which are causing or may cause adverse impacts to the water and related natural ~~land~~ resources or the public interest, it shall declare, delineate, or modify Water Use Caution Areas. The Governing Board shall declare a Water Use Caution Area by adopting a rule or issuing an order imposing special requirements for existing water users and permit applicants to prevent or remedy impacts to water and related natural resources or the public interest ~~land site-specific problems.~~

(2) No change.

(3) The regions described in this Rule have been declared Water Use Caution Areas by the District Governing Board. This Rule reaffirms the declaration of Water Use Caution Areas and creates conditions to be applied to water users in those areas.

(a) Northern Tampa Bay Water Use Caution Area. To address ~~groundwater~~ ~~ground water~~ withdrawals that have resulted in lowering of lake levels, destruction or deterioration of wetlands, reduction in streamflow, and salt water intrusion, the Governing Board declared portions of northern Hillsborough County, southwestern Pasco County, and all of Pinellas County a Water Use Caution Area on June 28, 1989, pursuant to Resolution Number 934. The Governing Board approved expansion of the boundaries of the Water Use Caution Area in June 2007.

1. No change.

2. Regulations specifically applicable to this Water Use Caution Area are ~~set forth~~ ~~contained~~ in “Sections 4.2, 4.3, 4.5 and 7.3, Part B, Basis of Review, of the Water Use Permit Information Manual and are in addition to all other regulations set forth in Chapter 40D-2, F.A.C., and Part B and Part D of the Water Use Permit Information Manual, incorporated by reference in Rule 40D-2.091, F.A.C.”

3. through 4. No change.

(b) 1. through 4. No change.

5. Any permit with a withdrawal point located within the boundaries of the SWUCA is deemed to be within the SWUCA. Permits with permitted withdrawals in more than one Water Use Caution Area (WUCA) shall be subject to the conservation and reporting requirements of the WUCA within which the majority of permitted quantities are withdrawn, or projected to be withdrawn, in addition to all other rule criteria, including Minimum Flows and Levels requirements, as set forth in Chapter 40D-2, F.A.C., and the Water Use Permit Information Manual incorporated by reference in Rule 40D-2.091, F.A.C. Basis of Review. Nothing in the rules and Basis of Review ~~for Water Use Permitting~~ specific to the SWUCA shall be interpreted or applied in any manner that would interfere with the Comprehensive Recovery Plan Strategy for the Northern Tampa Bay Area as outlined in Rule 40D-80.073, F.A.C.; ~~or the Northern Tampa Bay New Water Supply and Ground Water Withdrawal Reduction Agreement.~~

6. through 7. No change.

(c) No change.

Rulemaking Specific Authority 373.044, 373.113, 373.171 FS. Law Implemented 373.0395, 373.042, 373.0421, 373.171, 373.216, 373.219, 373.223 FS. History—Readopted 10-5-74, Formerly 16J-3.30, Amended 10-1-89, 11-15-90, 3-1-91, 7-29-93, 1-1-03, 1-1-07, 10-1-07, 2-13-08, 4-7-08, _____.

The following provisions are changed in the Water Use Permit Information Manual, Part B, Basis of Review, which is incorporated by reference in Rule 40D-2.091, F.A.C.:

Water Use Permit Information Manual

Part B, Basis of Review

CHAPTER 4 CONDITIONS FOR ISSUANCE – TECHNICAL CRITERIA

4.2 ENVIRONMENTAL IMPACTS

The following sentence is added to section 4.2 as a new last paragraph just before the subsection titled “A. Wetlands”:

Compliance with the performance standards for permittees encompassed within the Comprehensive Plan set forth in Rule 40D-80.073, F.A.C., shall be addressed as specified in Rule 40D-80.073, F.A.C.

Revised

4.3 MINIMUM FLOWS AND LEVELS

The following changes are made to the subsection titled “A. Withdrawals That Affect Water bodies for Which Minimum Flows and Levels Have Been Adopted within Those Portions of Hillsborough County north of State Road 60, and Pasco and Pinellas Counties (hereinafter the “Area”):

A. Withdrawals That Affect Water Bodies for Which Minimum Flows and Levels Have Been Adopted Within the Northern Tampa Bay Water Use Caution Area ~~Within Those Portions of Hillsborough County north of State Road 60, and Pasco and Pinellas Counties (hereinafter the “Area”)~~. In establishing Minimum Flows and Levels, the District has determined that the actual water levels in many of the water bodies for which Minimum Flows and Levels have been established are below the Minimum Flow and Level. The District is implementing a recovery strategy to address water bodies that are below their Minimum Flows and Levels. The recovery strategy, and associated mitigation plan, referred to as the Comprehensive Plan, is described in Rule 40D-80.073, F.A.C. ~~The District is expeditiously implementing a recovery strategy for the Area in keeping with the District’s legislative mandate pursuant to Sections 373.036, 373.0361, 373.0421, 373.0831, 373.1962 and 373.1963, F.S., to resolve the water supply and water resource impact concerns of the Northern Tampa Bay Area in a cooperative manner with the water suppliers and interested parties. This Section 4.3 A. and Chapter 40D-80, F.A.C., set forth the regulatory portion of the first phase (through December 31, 2010) of the recovery strategy for the Area. The following requirements of this Section 4.3 A. effectuate part of the Comprehensive Plan that recovery strategy and shall be effective only through December 31, 2020 2010. The District will evaluate the state of knowledge of these matters in 2010. Based on that evaluation, the District may revise this Section 4.3 A. as appropriate.~~ Compliance with

Section 4.3 A. does not, by itself, satisfy the other conditions for issuance requirements of Chapter 40D-2, F.A.C., including Rule 40D-2.301, F.A.C for new withdrawals proposed after August 3, 2000.

1. For New Withdrawals Proposed After August 3, 2000, Except For Withdrawals Subject to 4.3 A.2. Below.

a. Where above Minimum Flow or Level – For water bodies that are predicted to be impacted by the proposed withdrawal and where the actual flow or level is at or above a Minimum Flow or Level, withdrawals shall be limited to that quantity, as may be further limited by other provisions of Rule 40D-2.301, F.A.C., and this Basis of Review, that does not cause the actual flow to fall below the Minimum Flow, nor cause the actual level to fall below the Minimum Level on a long-term average basis (the “Baseline Quantity”). For purposes of this Section 4.3 A., “long-term” means a period which spans the range of hydrologic conditions which can be expected to occur based upon historical records, ranging from high water levels to low water levels. In the context of a predictive model simulation, a long-term simulation will be insensitive to temporal fluctuations in withdrawal rates and hydrologic conditions, so as to simulate steady-state average conditions. In the context of an average water level, the average will reflect the expected range and frequency of levels based upon historic conditions. This period will vary because reasonable scientific judgment is necessary to establish the factors to be used in the assessment of each application depending on the geology and climate of the area of withdrawal, the depth of and number of wells and the quantity to be withdrawn.

i. If the withdrawal of the requested quantity of water does not meet the condition in 4.3 A.1.a. above, the applicant shall identify the Baseline Quantity, and the District shall consider, as may be further limited by other provisions of Rule 40D-2.301, F.A.C., and this Basis of Review, the authorization of the additional quantity of water to be withdrawn where the applicant:

(1) Demonstrates that there are no reasonable means to modify the proposed withdrawal to meet the conditions in 4.3 A.1.a., including the use of alternative supplies, to reduce or replace the amount of the requested quantity exceeding the Baseline Quantity. Cost shall not be the sole basis for determining whether the means are reasonable; and

(2) Provides reasonable assurance that significant harm will be prevented to the wetlands and surface water bodies that could be affected by the proposed withdrawal if the requested quantity is withdrawn; and

(3) Demonstrates that any measures used to provide the reasonable assurance specified in 4.3 A.1.a.i(2) above will not cause a violation of any of the criteria listed in paragraphs 40D-2.301(1)(a)-(n), Rule 40D-4.301 or 40D-4.302, F.A.C., as applicable.

(1) The measures proposed may include hydration of affected water bodies or modification of existing drainage structures to prevent significant harm to affected water bodies, provided that the measures within the EMP minimize the need for supplemental hydration to the greatest extent practical.

ii. To support whether the applicant has provided reasonable assurance pursuant to 4.3 A.1.a.i(2) above, the applicant must submit an environmental management plan (“EMP”) for approval by the District describing the measures to be used to prevent significant harm from withdrawal of the requested quantity. The EMP must include a monitoring program for early detection of impacts to wetlands and surface water bodies that could be affected by the proposed withdrawal and an implementation scheme for corrective actions to prevent unacceptable adverse impacts. The EMP shall include provisions to evaluate changes in water quality, water levels, vegetation, and fish and wildlife. The EMP shall also include clear thresholds as to when the implementation scheme will be initiated. The implementation scheme shall include details as to how the proposed measures will be effected, the methods to be followed in order to functionally replicate the natural hydrologic regime of affected water bodies, and efforts to be undertaken to minimize the effects of changes in water chemistry. The implementation scheme shall also require reduction of pumping to the Baseline Quantity as a corrective action if no other measures, including supplemental hydration, are successful in preventing unacceptable adverse impacts to wetlands and surface water bodies due to withdrawals. An approved EMP shall be incorporated as a special condition to any permit issued.

(2) If supplemental hydration is proposed, the applicant will be required to identify in the application and monitor a representative number of wetlands in the vicinity of the withdrawal. The monitored wetlands shall include a representative number of MFL or MFL surrogate wetlands not receiving supplemental hydration. An MFL surrogate wetland is the nearest wetland site of the same type and condition to the proposed withdrawal that is not anticipated to require supplemental hydration. The monitored wetlands shall also include, where available, non-MFL wetlands not receiving hydration as well as MFL and non-MFL wetlands proposed for supplemental hydration.

(3) A representative number of wetlands is a number of a particular type or types of wetlands, in the vicinity of the withdrawal, sufficient to adequately determine the hydrologic response of the wetlands and surface water bodies that could be affected by the proposed withdrawal to rainfall and water withdrawals.

(4) If supplemental hydration is proposed to rehydrate lakes or wetlands, in order for a water use permit authorizing the Requested Quantity to be issued, the applicant shall demonstrate that Governing Board must

~~determine whether:~~

(A) The measures within the proposed EMP minimize the quantity of water required for supplemental hydration by raising water levels by filling or blocking ditches, removing culverts or outflows, or other alterations, where practical and feasible, and whether such alterations will achieve the applicable minimum level (where the measures proposed by the application identify the need for specific Environmental Resource Permits, such permits must be obtained prior to withdrawal of the requested quantities);

(B) The applicant has proposed use of the lowest quality of water for rehydration which is scientifically, technically and environmentally feasible to prevent unacceptable adverse impacts;

(C) Measures within the proposed EMP minimize the need for ground water hydration to the greatest extent practical based on the quantity, frequency and duration of the anticipated use;

(D) The measures within the proposed EMP minimize or avoid the potential for unacceptable adverse impacts to water quality or fish and wildlife in the wetland or surface water body receiving supplemental hydration, and, if such a potential exists, the EMP contains adequate measures to detect impacts at an early stage and to prevent unacceptable adverse impacts in an expeditious manner;

(E) The measures within the proposed EMP minimize or avoid the potential for the establishment or spread of undesirable aquatic vegetation in the wetland or surface water body receiving supplemental hydration and, if such a potential exists, the EMP contains adequate measures to detect vegetative changes at an early stage and to prevent undesirable vegetative changes in an expeditious manner;

(F) The quantity of water needed for supplemental hydration is outweighed by the quantity of water made available for other uses;

(G) The quantity of water needed for supplemental hydration is reasonable compared to the unacceptable adverse impacts to be prevented;

(H) The unacceptable adverse impact to be prevented by supplemental hydration results in benefits that outweigh the potential for impacts caused by the additional withdrawal; and

(I) The quantity of the water used for supplemental hydration is reasonable considering the proportion expected to percolate into the aquifer.

iii. Wetlands or other surface water bodies receiving supplemental hydration must have flow meters to measure the quantity of supplemental hydration water used at each site. This information shall be reported to the District as required by permit condition.

iv. Pursuant to Chapter 373, F.S., and Chapter 40D-2, F.A.C., permits may be conditioned to include aquifer regulatory levels intended to achieve compliance with one or more of the Chapter 40D-2, F.A.C., conditions for issuance, including paragraph 40D-2.301(1)(d), F.A.C., Minimum Flows and Levels criteria. The aquifer regulatory level that will be appropriate for any particular permit, considering all conditions for issuance, is the level that results from the more stringent condition.

v. If supplemental hydration with ground water is proposed pursuant to paragraph 4.3 A.1.a.i. and 4.3 A.1.a.ii, the applicant will be required to propose a Floridan aquifer regulatory level for each of the MFL wetlands (defined in 4.3 A.1.a.vi.(2)(A) below) or MFL surrogate wetlands not receiving supplemental hydration in the vicinity of the proposed water use permit. The aquifer regulatory level for each MFL wetland or MFL surrogate wetland not receiving supplemental hydration with ground water shall be the Floridan aquifer level that does not cause the Minimum Level to be exceeded on a long-term basis, based solely on withdrawal management. The aquifer regulatory level for MFL wetlands receiving supplemental hydration with ground water shall be the Floridan aquifer level taking into account the benefits of the hydration.

vi. The procedures described below are those applicable to the determination of an aquifer regulatory level relating to paragraph 40D-2.301(1)(e)(~~d~~), F.A.C., where the District Governing Board authorizes a quantity of Upper Floridan aquifer ground water pursuant to 4.3 A.1.a.i. where an applicant proposes prevention measures, and shall be determined for, and specified in, any permit issued as follows:

(1) The aquifer regulatory level is the long-term average potentiometric level that will not result in significant harm to a water body for which a Minimum Flow or Level has been established in Chapter 40D-8, F.A.C., taking into account the effects of prevention measures such as hydration on the impacted Minimum Flow or Level. The aquifer regulatory level for the Upper Floridan aquifer shall be proposed by the water use permit applicant with the permit application for review, modification as needed, and approval by the District as part of any permit issued. The aquifer regulatory level will be used to determine the annual average daily quantity for the permit that does not result in significant harm to water resources taking into account prevention measures such as hydration. The aquifer regulatory level is one of several long-term compliance tools that are evaluated by the District, but is not a mechanism to control withdrawals on a short term basis. The aquifer regulatory level and the quantities granted based on this level shall be adjusted if data indicate that significant harm is occurring because of the withdrawals or

if data indicates that additional withdrawals can be permitted without causing significant harm.

(2) The aquifer regulatory level for the Upper Floridan aquifer shall be calculated based on the relationship between the potentiometric level of the Upper Floridan aquifer and water levels in the surficial aquifer system and associated wetlands and lakes, taking into account the measures proposed by the applicant to prevent the significantly harmful impacts of withdrawals. The Floridan aquifer regulatory levels associated with MFL wetlands or MFL surrogate wetlands not receiving supplemental hydration, shall be equal to the Floridan aquifer level that does not cause the Minimum Level to be exceeded on a long-term basis, based solely on withdrawal management. The Floridan aquifer regulatory level associated with MFL wetlands that receive supplemental hydration shall be determined according to the following guidelines:

(A) Determine the historic average Upper Floridan aquifer potentiometric level in the vicinity of the wetland or lake for which a minimum wetland level or minimum lake level has been established in Chapter 40D-8, F.A.C. (Referred to hereafter as "MFL wetland" or "MFL lake," as applicable). The historic average potentiometric level is estimated for each site as follows:

(i) If an Upper Floridan aquifer monitor well is located in the vicinity, and if the available pre-withdrawal potentiometric level data are sufficient to capture the expected long-term range of pre-withdrawal potentiometric levels, then the historic average potentiometric level is calculated by taking the average of the pre-withdrawal potentiometric level data.

(ii) If an Upper Floridan aquifer monitor well is located in the vicinity, and if the available pre-withdrawal potentiometric level data are not sufficient to capture the expected long-term range of pre-withdrawal potentiometric levels, then the historic average potentiometric level shall be estimated using best available data and methods. Methods may include correlation of the available pre-withdrawal potentiometric level data to historic potentiometric data in other areas of the region and estimating the historic average potentiometric level at the site in question using statistical analysis.

(iii) If no pre-withdrawal potentiometric level data for an existing Upper Floridan aquifer monitor well in the vicinity are available, then the historic average potentiometric level is determined by adding the absolute value of the estimated current average cumulative drawdown at the well to the current average potentiometric level of the well.

(iv) If no Upper Floridan aquifer monitor well exists in the vicinity of each MFL lake or MFL wetland, the historic average potentiometric level can be determined based on an evaluation of regional aquifer potentiometric level data, including potentiometric surface maps.

(B) Estimate the resulting cumulative Upper Floridan aquifer potentiometric level drawdown at the location of the MFL wetland or MFL lake utilizing acceptable ground water flow models or analytical techniques, resulting from the proposed and existing withdrawals, taking into account the effect of the prevention measures proposed by the permit applicant such that the drawdown together with the prevention measures will not cause significant harm to the MFL wetland or MFL lake (hereinafter referred to as the "Resulting Drawdown").

(C) Subtract the Resulting Drawdown from the historic average potentiometric level to calculate the aquifer regulatory level.

(D) The Resulting Drawdown shall be determined using industry-standard ground water flow models or analytical techniques, based on best available aquifer-characteristic information, simulating long-term average water use and hydrologic conditions.

vii. If the ~~District Board~~ determines that reasonable assurances have been provided pursuant to 4.3 A.1.a., the ~~District Board~~ shall authorize the additional quantity of water to be withdrawn.

b. For new quantities that affect a water body that is below Minimum Flow or Level – requests for withdrawals of new quantities of water that are projected to impact a water body which is below its minimum flow or level shall not be approved unless the new quantities are used solely for furthering the attainment of the objective set forth in the ~~Comprehensive Recovery Plan recovery strategy~~ in Rule 40D-80.073, F.A.C.

~~2.c.~~ Quantities Authorized to Be Withdrawn as of August 3, 2000.

~~a.ii~~ Where above Minimum Flow or Level – For water bodies that are affected by ~~the~~ withdrawals, and where the actual flow or level is at or above a Minimum Flow or Level, withdrawals, including those from the Tampa Bay Water Central System Facilities, shall be evaluated pursuant to 4.3 A.1.a. above.

~~b.iii~~ Where below Minimum Flow or Level – For water bodies that are affected by the withdrawal and where the actual flow or level is below a Minimum Flow or Level:

~~i.(A)~~ Tampa Bay Water Central System Facilities Wellfields.

Compliance with established Minimum Flows and Levels for waterbodies that are adversely impacted by withdrawals from the Tampa Bay Water Central System Facilities shall be addressed as specified in Sections 4.3 A. and 7.3 8., Part B, Basis of Review, of the Water Use Permit Information Manual and Rule 40D-80.073, F.A.C. The

Central System Wellfields (i.e., Cosme-Odessa, Eldridge-Wilde, Section 21, South Pasco, Cypress Creek, Cross Bar Ranch, Starkey, Morris Bridge, Northwest Hillsborough Regional, Cypress Bridge, and North Pasco) are encompassed within a recovery strategy referenced in Rule 40D-80.073, F.A.C., and are controlled by the New Water Supply and Ground Water Reduction Agreement (Agreement) through the term of the Agreement. Recovery to Wetland and Lake Minimum Levels for wetlands and lakes described in and established in subsection 40D-8.623 (3) and 40D-8.624(12), F.A.C., is the objective of the recovery strategy under Rule 40D-80.073, F.A.C., and reductions in ground water withdrawals from the Central System Wellfields to reduce the impacts of withdrawals on wetlands and lakes is an objective of the Agreement. Therefore, withdrawals from these Wellfields shall not be required to comply with the Minimum Flows and Levels established within the area described in Section 4.3 A. during the term of the Agreement, nor shall Aquifer Regulatory Levels as set forth in Section 4.3 A.1.a.v. be applied to these Wellfields during the term of the Agreement:

ii. ~~(B)~~ Other Existing Permittees as of August 3, 2000.

Compliance with the performance standards for permittees encompassed within the Comprehensive Plan set forth in Rule 40D-80.073, F.A.C., shall be addressed as specified in Rule 40D-80.073, F.A.C.

~~Permittees not subject to 4.3 A.2.b.i. above within this Area who apply for renewal shall reduce the impacts, if any, of their withdrawals, as set forth in subsection 40D-80.073(5), F.A.C., and therefore are not required to comply with the Minimum Flows and Levels established within this Area through the period of the first phase of the recovery strategy, ending December 31, 2010.~~

Revised 11-2-09, _____.

4.5 SALINE WATER INTRUSION

The following sentence is added to section 4.5 as a new last paragraph:

Compliance with the performance standards for permittees encompassed within the Comprehensive Plan set forth in Rule 40D-80.073, F.A.C., shall be addressed as specified in Rule 40D-80.073, F.A.C.

Revised 1-1-07, _____.

7.0 WATER USE CAUTION AREAS

7.3 NORTHERN TAMPA BAY WATER USE CAUTION AREA

1. through 7. No change.

8. Tampa Bay Water Central System Facilities Permitting

From the 1930's through the 1990's eleven wellfields were developed within the Northern Tampa Bay Water Use Caution Area (the "Area"). Those wellfields are Cosme-Odessa, Eldridge-Wilde, Section 21, South Pasco, Cypress Creek, Cross Bar Ranch, Starkey, Morris Bridge, Northwest Hillsborough Regional, Cypress Bridge, and North Pasco, and are collectively hereinafter referred to as the Central System Facilities. The Central System Facilities are operating under Water Use Permit No. 2011771 (the "Consolidated Permit"). The Consolidated Permit will expire on December 31, 2010. The predominant cause of the lowered aquifer levels in the vicinity of the Central System Facilities is groundwater withdrawals from the Central System Facilities. As a result, wetlands, lakes, streams, springs and aquifer levels in the vicinity of the Central System Facilities have been impacted by reduced water flows and levels. In addition to the impacts occurring to wetlands, lakes, streams, springs and aquifer levels, the existing water levels and flows in certain wetlands, lakes, streams, springs and aquifer levels are below the Minimum Flows or Levels established by the District. The recovery strategy developed by the District and ending December 31, 2010, has had the effect of increasing water levels and flows and improving the condition of many wetlands, lakes, streams, springs and aquifer levels in the Area due to the reduction of groundwater withdrawal from the Central System Facilities. However, compliance with permitting criteria of Rule 40D-2.301, F.A.C. has not been demonstrated since the current permitted withdrawal limit of 90 MGD on a 12-month moving average basis will have only been in effect for two years when the permit expires. Since these facilities supply potable water to Pinellas, Pasco, and Hillsborough counties and evaluation of the effect of the reduced withdrawal rate has not been completed, the District has determined that it is in the public interest and consistent with the objectives of the District to develop a second phase titled Recovery and Mitigation Plan. This Plan includes renewal of the Consolidated Permit based on this Section 7.3.8 and Rule 40D-80.073, F.A.C., in lieu of the standard permitting criteria for wetlands, lakes, streams, springs and aquifer levels set forth in Sections 4.2, 4.3.A and 4.5 of Part B, Basis of Review, Water Use Permit Information Manual incorporated in Rule 40D-2.091, F.A.C. In all other respects, the renewal of the Consolidated Permit shall be governed by the criteria set forth in Rule 40D-2.301, F.A.C. As part of the establishment of minimum flows and levels pursuant to Sections 373.042 and 373.0421, F.S., the District is implementing a recovery strategy. The Northern Tampa Bay New Water Supply and Ground Water Withdrawal Reduction Agreement ("Partnership Agreement") is part of that recovery strategy. An integral part of the recovery strategy is issuance of water use permits and the procedures applicable to the issuance of those permits. Criteria for issuance of those permits will be governed by this Section 7.3.8. The procedure and rule criteria

~~applicable to the issuance of water use permits for the Cross Bar Ranch, Cypress Creek, Cypress Bridge, Starkey, North Pasco, South Pasco, Eldridge-Wilde, Cosme-Odessa, Section 21, Morris Bridge and Northwest Hillsborough Regional Wellfields ("Central System") are those procedures and criteria set forth in the Partnership Agreement, which is incorporated herein by reference and available from the District upon request. This rule shall apply only to consolidated and non-consolidated permits as defined under the Partnership Agreement. The procedures and criteria set forth in the Partnership Agreement shall supersede and replaced all conflicting District rules, if any: Upon termination of the water use permits issued pursuant to this Section, or December 31, 2010, whichever is first, this District's then existing rules would thereafter apply to the issuance of water use permits for the Central System.~~

Revised

NAME OF PERSON ORIGINATING PROPOSED RULE: Ken Weber, Water Use Permitting Program Director, Strategic Program Office, 2379 Broad Street, Brooksville, FL 34604-6899, (352)796-7211, extension 4303

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

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: December 15, 2009

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: December 24, 2009