

Notice of Proposed Rule

WATER MANAGEMENT DISTRICTS

Southwest Florida Water Management District

RULE NO: RULE TITLE

40D-8.041: Minimum Flows

PURPOSE AND EFFECT: This rulemaking is to comply with Section 373.042, F.S. and will amend Rule 40D-8.041, F.A.C., to establish Minimum Flows for the Anclote River System located within the District's Pinellas-Anclote Basin.

SUMMARY: For purposes of the rule, the Anclote River system includes the watercourse from the headwaters to the Gulf of Mexico. For this rule, the location of the gage represents the division between the freshwater portion of the river upstream of the gage and the estuarine portion downstream of the gage.

Significant harm was defined as occurring when modeled withdrawals from the baseline or unaltered flow conditions caused more than a 15 percent decline in any one of several ecologically based habitat metrics. In addition to determination of an allowable percent flow reduction, a low flow threshold (LFT) has also been proposed for the freshwater segment. A LFT is defined to be the flow that serves to prohibit withdrawals under very low flow conditions throughout the year.

Three seasons (Blocks 1, 2 and 3) were evaluated separately and a freshwater and estuarine MFL was determined for each Block. The proposed freshwater minimum flows allow reduction of up to 11% of Block 1 (April 12 through July 21) baseline flows, up to 18% of Block 3 flows (October 15 through April 11) and up to 14 % of Block 2 flows (July 22 through October 14) when flows are between 12 cfs and 138 cfs. A freshwater LFT is established so that withdrawals are prohibited from depressing flows below 12 cfs at any time. When baseline flows exceed 138 cfs, up to 8% of the excess flows may be withdrawn. Estuarine MFLs are similar, but do not have a low flow threshold. Proposed minimum flows allow reductions of up to 12% of Block 1 flows, up to 16 % of Block 2 flows and up to 18%, of Block 3 flows.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: A seasonal minimum flow regime is proposed for the Anclote River to minimize disruptions to estuarine processes and estuarine dependent species. Groundwater withdrawals in the Northern Tampa Bay area have significantly reduced its flows. It is estimated that the mean flow of the river has been reduced by 29% for the years 1955 to 2007. Small water users exempt from water use permitting are not subject to the minimum flow restrictions. There are no permitted surface withdrawals or applications for withdrawals from the river so it is not possible to estimate the number of future surface water withdrawals that may be impacted by the proposed revisions. Groundwater withdrawals that could affect the flows have been limited by existing Chapter 40D-2, F.A.C. permitting criteria but may be available on a case-by-case basis. It is not anticipated that the proposed revisions will significantly increase permitting, monitoring or enforcement costs to the District. No other state or local governments are responsible for the implementation or enforcement of the proposed minimum flows. The proposed minimum flows will not have an impact on state or local revenues. It is not anticipated that there will be quantities available for permitting until proposed minimum flows are exceeded. Additional sources of water are available in the area from stormwater, local utilities and Tampa Bay Water ranging in costs from \$2.80 to \$3.98 per thousand gallons. The seasonal nature of water availability from the river, due to existing Chapter 40D-2, F.A.C. criteria and the proposed minimum flows, make it unlikely that a small business would apply for withdrawals from the river. Small businesses with withdrawal facilities and quantities that do not exceed Chapter 40D-2, F.A.C. permitting thresholds will not be affected by the proposed minimum flows. Commercial and recreational fishing and related businesses in the area will benefit from the protection of estuarine-dependent fish, invertebrate and shellfish species. Most such businesses are small businesses. It is unlikely that any small cities or counties will be affected by the proposed revisions.

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

LAW IMPLEMENTED: [373.036](#), [373.0361](#), [373.042](#), [373.0421 FS](#).

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

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: ADACoordinator@WaterMatters.org. 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: Dianne.Lee@watermatters.org, Office of General Counsel, 2379 Broad Street, Brooksville, FL 34604-6899, (352)796-7211, extension 4660 (OGC #2008071)

THE FULL TEXT OF THE PROPOSED RULE IS:

40D-8.041 Minimum Flows.

(1) through (13) No change.

(14) Minimum Flows for the Anclote River.

(a) The Minimum Flows are to ensure that the minimum hydrologic requirements of the water resources or ecology of the natural systems associated with the freshwater and estuarine reaches of the Anclote River are met.

(b) Minimum Flows for the freshwater and estuarine reaches of the Anclote River are based on the natural flow at the USGS Anclote River near Elfers Gage No. 02310000 (the “Elfers Gage”) and are set forth in Table 8-20 (estuarine reach downstream of the Elfers Gage) and Table 8-21 (freshwater reach upstream of Elfers Gage). Natural flow is defined as flow that would exist in the absence of withdrawal impacts. There are three seasonally dependent or Block specific Minimum Flows for each reach. In addition, the Minimum Flows for the freshwater reach are flow-based. The Minimum Low Flow Threshold for the freshwater reach is applied continuously regardless of season. No surface water withdrawal from the freshwater reach will be permitted that would cumulatively cause the natural flow to be reduced below the Minimum Low Flow Threshold of 12 cfs. Additionally, permitted withdrawals shall cease when flows are below the Minimum Low Flow Threshold of 12 cfs. In addition, the total permitted maximum withdrawals from the freshwater reach on any given day from July 22 through April 11 shall not exceed eight percent of the previous day’s flow when natural flow equals or exceeds 138 cfs at the Elfers Gage.

Table 8-20 Minimum Flow for Anclote River below USGS Anclote River
near Elfers Gage USGS No. 02310000 (Estuarine Reach)

<u>Period</u>	<u>Effective Dates</u>	<u>Minimum Flow Is</u>
<u>Block 1</u>	<u>April 12 through July 21</u>	<u>Previous day’s flow minus 12%</u>
<u>Block 2</u>	<u>October 15 through April 11</u>	<u>Previous day’s flow minus 16%</u>
<u>Block 3</u>	<u>July 22 through October 14</u>	<u>Previous day’s flow minus 18%</u>

The Minimum Flow at any given point below the Elfers Gage is based on the previous day’s natural flow at that point minus the percentage specified above corresponding to the applicable Block.

Table 8-21 Minimum Flow for Anclote River above USGS Anclote River
near Elfers Gage USGS No. 02310000 (Freshwater Reach)

<u>Period</u>	<u>Effective Dates</u>	<u>Where Flow on Previous Day Equals:</u>	<u>Minimum Flow Is</u>
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<u>Annually</u>	<u>January 1 to December 31</u>	<u>12 cfs</u> <u><12 cfs and >138 cfs</u> <u>138 cfs</u>	<u>Actual flow</u> <u>Seasonally dependent - see</u> <u>Blocks below</u> <u>Seasonally dependent - see</u> <u>Blocks below</u>
<u>Block 1</u>	<u>April 12 through July 21</u>	<u><12 cfs</u> <u>>12 cfs</u>	<u>Actual flow</u> <u>Previous day's flow minus 11%</u> <u>but not less than 12 cfs</u>
<u>Block 2</u>	<u>October 15 through April 11</u>	<u>≤12 cfs</u> <u>>12 cfs and <138 cfs</u> <u>138 cfs</u>	<u>Actual flow</u> <u>Previous day's flow minus 14%</u> <u>but not less than 12 cfs</u> <u>Previous day's flow minus 8%</u>
<u>Block 3</u>	<u>July 22 through October 14</u>	<u><12 cfs</u> <u>>12 cfs and <138 cfs</u> <u>138 cfs</u>	<u>Actual flow</u> <u>Previous day's flow minus 18%</u> <u>but not less than 12 cfs</u> <u>Previous day's flow minus 8%</u>

(c) Minimum five-year and ten-year moving annual average values are set forth in Table 8-22 as a tool to assess whether flows to the Anclote River remain above flow rates that are expected to occur with implementation of the Minimum Flow described in Table 8-21. The Means and Medians are based on evaluation of daily flow records for the Elfers Gage, adjusted for withdrawal impacts for the period 1955 through 2006. Yearly means and medians are computed for January 1 through December 31 of each year. Therefore, the Means and Medians are hydrologic statistics that represent the flows that will be met or exceeded if compliance with the Minimum Flow is maintained during hydrologic conditions similar to the 1955-2006 period. However, since changes in the watershed such as future structural alterations and climatic change could potentially affect surface water or groundwater flow characteristics and additional information relevant to Minimum Flows development may become available, the District is committed to periodic re-evaluation of the Minimum Flows.

Table 8-22 Minimum Five-Year and Ten-Year Moving Mean
and Median Flows for the Anclote River above
USGS Anclote River near Elfers Gage USGS No. 02310000
Based on Application of the Table 8-21 Minimum Flow on
Adjusted Flows at USGS 02310000

<u>Minimum Flow</u>	<u>Hydrologic Statistic</u>	<u>Flow (cfs)</u>
<u>Annual Flow</u>	<u>10-Year Mean</u>	<u>48</u>
	<u>10-Year Median</u>	<u>17</u>
	<u>5-Year Mean</u>	<u>36</u>
	<u>5-Year Median</u>	<u>15</u>
<u>Block 1</u>	<u>10-Year Mean</u>	<u>13</u>
	<u>10-Year Median</u>	<u>7</u>
	<u>5-Year Mean</u>	<u>11</u>
	<u>5-Year Median</u>	<u>6</u>
<u>Block 2</u>	<u>10-Year Mean</u>	<u>25</u>
	<u>10-Year Median</u>	<u>17</u>
	<u>5-Year Mean</u>	<u>21</u>
	<u>5-Year Median</u>	<u>15</u>
<u>Block 3</u>	<u>10-Year Mean</u>	<u>92</u>
	<u>10-Year Median</u>	<u>64</u>
	<u>5-Year Mean</u>	<u>81</u>
	<u>5-Year Median</u>	<u>56</u>

Rulemaking Authority 373.044, 373.113, 373.171 FS. Law Implemented 373.036, 373.0361, 373.042, 373.0421 FS. History—
Readopted 10-5-74, Amended 12-31-74, Formerly 16J-0.15, 40D-1.601, Amended 10-1-84, 8-7-00, 2-6-06, 4-6-06, 1-1-07, 11-
25-07, 2-18-08, 3-2-08, 5-12-08, 5-10-09, 3-23-10, 3-28-10, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Michael Heyl, Chief Environmental Scientist

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

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: May 25, 2010

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: June 4, 2010