

Lake Okeechobee Service Area Water Availability Rule Adoption

*Governing Board Meeting
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Overview of Lake Okeechobee Water Availability Rule Concepts

- Historic, actual uses of water from the Lake will be 'capped'
- Historic, actual use (a.k.a. "base condition water use") should be conditionally allowed to be re-allocated
- 2 Step Process:
 - Criteria for calculating "base condition water use" on a project scale
 - Criteria for allocating "base condition water use" on a project scale

Overview of Lake Okeechobee Water Availability Rule Concepts, *cont.*

- Step #1: Calculating “base condition water use”
 - By Use Class
 - Historic use as calculated using current “B List” criteria
 - Historic, unauthorized uses included in base condition water use

Overview of Lake Okeechobee Water Availability Rule Concepts, *cont.*

- **Step #2: Allocating “base condition water use”**
 - **Renewals:**
 - Re-issuance of existing permits with no changes
 - “Good to go”
 - **Modifications with no increase:**
 - Changes of withdrawal facility, change of crop type within permitted use class, etc.
 - “Good to go”

Overview of Lake Okeechobee Water Availability Rule Concepts, *cont.*

- **Step #2: Allocating “base condition water use,” *cont.***
 - **New uses or modifications for increased water**
 - **Water available from 1 of 4 sources:**
 - Water from certified (CERP) project
 - Lake Okeechobee, if offset by an alternative source
 - Alternative water supply
 - Available Lake Okeechobee Base Condition Water
 - **Board’s discretion to not allocate Lake water, if improve minimum flow & level or restoration project /plan**

Today's Purposes

- **Adopt rule amendments:**
 - **Establishing the “Lake Okeechobee Water Availability Rule”**
 - **Amending the Lake’s Minimum Flow and Level status from prevention to recovery**
- **Approve Order to amend the Lower East Coast Plan, Appendix H (MFL Prevention / Recovery Strategies)**

Procedural Background

- **June Governing Board Meeting**
 - **Authorized publication of draft rule amendments**
 - **Numerous stakeholder comments expressed**
 - **Rule language changes made to clarify intent and application of rule**
- **Need Board's direction to include proposed changes in Notice of Changes**

Administrative Procedures

- Rule text changes made after rule published
- Changes included in Board materials, distributed to public, and posted on web
- Presentation will discuss significant text changes made after publication
- Notice of Changes to rule text will be published, as required

Proposed Changes to Published Rule

- **Concerns Raised: “Grace Period”**
 - Inclusion of historic, unauthorized uses in base condition water use, as originally proposed, by October 29th not feasible
- **Considerations:**
 - Outreach difficult, tight timeframes, confusion over permit renewal v. authorization of past use
- **Proposed Language Change:**
 - Incorporate historic uses into base condition water use & implement through renewal process
 - BOR criterion 3.2.1.(1) & (2)

Proposed Changes to Published Rule, *cont.*

- **Concerns Raised:** “Board’s Discretion to Restrict Base Condition Water Use”
- **Considerations:**
 - Originally Published rule: After 10/29/08, Board could only restrict terminated / reduced water
 - Existing, unpermitted (“unassigned”) uses not addressed because expected to be ‘legal’ by 10/29/08
 - Users concerned about risk of future Board action
 - What type of agency action invokes Board’s discretion to restrict base condition water from being allocated to their project (new permit v. mod)

Proposed Changes to Published Rule, *cont.*

- **Concerns Raised:** "Board's Discretion to Restrict Base Condition Water Use," *cont.*
- **Proposed Language Change:**
 - Prior to 2/28/10: Board can restrict re-allocation of terminated water
 - Existing, unassigned uses can be permitted without risk of Board restriction
 - On or after 2/28/10: Board can restrict re-allocation of terminated, unassigned, or reduced base condition water use
 - New projects & modifications for increased base condition water use affected by restriction criteria

Example #1

- Existing 1,000 acre farm permitted to use 10 MGD
- District purchases farm
- Agricultural permit is “terminated”
 - 10 MGD base condition water use goes to “ledger” for potential re-allocation
- Landowner / farmer purchases fallow land within Basin and seeks 10 MGD allocation of Lake water
 - Considered a “new use”
- Board has discretion to issue Lake water off the “ledger” or direct applicant to other source

Proposed Changes to Published Rule_{,cont.}

- **Concerns Raised:** “What circumstances define a permit modification v. new permit?”
- **Considerations:**
 - Changes in water use class are treated as new use
 - E.g.: agricultural use to golf course use
 - New uses subject to all permit criteria, including proposed restriction criteria
 - Other interpretations suggest that changes in use class are modifications of permit with limited opportunity to change permit conditions
 - What is a permit? Issue applicable District-wide

Proposed Changes to Published Rule, *cont.*

- **Concerns Raised:** “What circumstances define a permit modification v. new permit / use?,” *cont.*
- **Proposed language:**
 - No changes
 - Propose Initiate Rule Development to better define permit classes and what circumstances constitute a permit, permit modification, and transfer

Modifications to Lake O's MFL Status

- New Lake Regulation Schedule results in potential for Lake MFL violations
- Appendix H of LEC Water Supply Plan amended to incorporate MFL recovery strategy
 - Regulatory criteria
 - Environmental enhancement projects
 - Water Shortage strategies
 - Capital projects to improve storage
- Amendments to LEC Plan limited in scope to Lake O issues only

Anticipated "LOSA Water Availability Rule" Schedule

- Today: Rules presented for adoption
- Late August: Notice of Change Published
- Potential for rule challenge
 - Up to 21 days after Notice of Changes published
- Mid October: Rule effective

Item #49 Agenda Action Items

- (A) Adopt amendments to Rules 40E-2.091, 40E-8.421 and 40E-20.091, F.A.C. and the Basis of Review for Water Use Permit Applications within the South Florida Water Management District” to address water supply availability issues within the Lake Okeechobee Service Area, amend consumptive use criteria, and establish a recovery strategy for Lake Okeechobee.
- (B) Approve order to amend the Lower East Coast Plan, Appendix H to be consistent with the proposed rules, above.

“Add-on” Item #61

Notice of Rule Development

- **District-wide Rule Development**
- **Purpose:** Clarify existing District practices on permit modification, transfers, & issuance
- Authorize publication of Notice of Rule Development to amend Chapters 40E-1, 40E-2 and 40E-20, F.A.C., and the Basis of Review for Consumptive Use Permits to clarify administrative procedures associated with obtaining a new consumptive use permit as well as renewing, modifying & transferring existing consumptive use permits