

Rules of the South Florida Water Management District

CONSUMPTIVE USE CHAPTER 40E-2, F.A.C.



Effective: October 23, 2012

October 23, 2012 Updates: (CUP Glitch Rule)

Summary of Amendments to Rule Chapters: 40E-0, 40E-1, 40E-2, 40E-5, 40E-8, 40E-20, F.A.C. and sections 1.1, 1.3.1, 1.3.2.1, 1.6, 1.7, 1.7.2.2, 1.7.2.3, 1.7.3, 1.7.4, 1.8,2.1, 2.3.1, 2.5.3, 2.6.1, 3.2.1, 3.4, 3.11.1, 4.1 and 5.2 of the Water Use Permit Applications Basis of Review (BOR).

The District updated, corrected and modified its water supply related and water use rules to delete language regarding basin expiration dates, delete references to repealed rules and make other minor corrections. In addition, the District updated rules to be consistent with statutory amendments regarding the Governing Board's delegation authority, incorporation of forms and materials, submission of compliance reports every ten years, and changed "Xeriscape" to "Florida-Friendly Landscaping".

**CHAPTER 40E-2
CONSUMPTIVE USE**

40E-2.010	Review of Consumptive Use Permit Applications
40E-2.011	Policy and Purpose
40E-2.031	Implementation
40E-2.041	Permits Required
40E-2.051	Exemptions
40E-2.061	No-Notice General Permit by Rule
40E-2.091	Publications Incorporated by Reference
40E-2.101	Content of Application
40E-2.301	Conditions for Issuance of Permits
40E-2.321	Duration of Permit
40E-2.331	Modification of Permits
40E-2.341	Revocation of Permits
40E-2.351	Transfer of Permits
40E-2.381	Limiting Conditions
40E-2.441	Temporary Permits (Repealed)
40E-2.451	Emergency Authorization
40E-2.501	Permit Classification

40E-2.010 Review of Consumptive Use Permit Applications.

Consumptive use permit applications are processed pursuant to Section 120.60, F.S., and Chapters 40E-1 and 28-106, F.A.C.

Rulemaking Authority 120.54(5), 120.60 FS. Law Implemented 120.54(5), 120.60 FS. History—New 7-2-98, Amended 10-23-12.

40E-2.011 Policy and Purpose.

(1) It is the policy of the District to control all water uses within its boundaries, pursuant to the provisions of Chapter 373, Florida Statutes, and Chapter 62-40 and Title 40E, F.A.C.

(2) The rules in this chapter implement the comprehensive water use permit system contemplated in Part II of Chapter 373, Florida Statutes.

(3) Additional rules relating to water use are found in Chapter 40E-5, F.A.C. (Artificial Recharge), Chapter 40E-8, F.A.C., (Minimum Flows and Levels (MFLs)), Chapter 40E-10, F.A.C. (Water Reservations), Chapters 40E-20, F.A.C. (General Water Use Permits), 40E-21, F.A.C. (The Water Shortage Plan), 40E-22, F.A.C., (Regional Water Shortage Plans) and 40E-24, F.A.C. (Mandatory Year-Round Landscape Irrigation Conservation Measures).

(4) Standards for the construction, repair and abandonment of water wells are found in Chapters 40E-3, F.A.C. (Water Wells).

Rulemaking Authority 373.044, 373.113, 373.171 FS. Law Implemented 373.103(1), 373.203, 373.216, 373.249 FS. History—New 9-3-81, Formerly 16K-2.01, Amended 7-4-82, 2-24-85, 11-18-91, 8-1-02, 8-31-03, 7-2-09, 10-23-12.

40E-2.031 Implementation.

(1) The effective dates for the water use permitting program established in this chapter are:

(a) If the use or withdrawal of water exceeds 100,000 gallons per day, the effective dates are:

1. January 12, 1977, for the portion of the District formerly within the Ridge and Lower Gulf Coast Water Management District,

2. March 2, 1974, for the remainder of the District;

(b) If the use or withdrawal of water does not exceed 100,000 gallons per day, the effective date is January 14, 1979.

(2) The effective dates specified in subsection (1) are used to determine the two year period provided in Section 373.236, F.S., for existing water users to file initial applications.

Rulemaking Authority 373.044, 373.113 FS. Law Implemented 373.103(1), 373.216, 373.226 FS. History–New 9-3-81, Formerly 16K-2.011, Amended 10-23-12.

40E-2.041 Permits Required.

(1) Unless expressly exempt by law or District rule, a water use permit must be obtained from the District prior to any use or withdrawal of water.

(2) The District issues water use permits in two forms, individual water use permits and general water use permits. An individual water use permit may be obtained by meeting the requirements of this chapter. Chapter 40E-20, F.A.C., provides the requirements for qualifying for a general water use permit.

(3) Under certain circumstances the District may issue a temporary water use permit pursuant to Section 373.244, F.S.

Rulemaking Authority 373.044, 373.113 FS. Law Implemented 373.079, 373.083, 373.103(1), 373.219, 373.244 FS. History–New 9-3-81, Formerly 16K-2.03(1), (2), Amended 10-23-12.

40E-2.051 Exemptions.

No permit is required under Rule 40E-2.041, F.A.C., for the following water uses:

(1) Water used strictly for domestic use at a single family dwelling or duplex provided that the water is obtained from one withdrawal facility for each single family dwelling or duplex.

(2) Water used strictly for fire fighting purposes.

Rulemaking Authority 373.044, 373.113, 373.171 FS. Law Implemented 373.219 FS. History–New 9-3-81, Formerly 16K-2.025, Amended 2-24-85, 4-20-94, 3-15-10.

40E-2.061 No-Notice General Permit by Rule.

(1) The Board hereby grants a general water use permit by rule to each person that does not otherwise require a consumptive use permit, within the District to use, withdraw, or divert water at a single family dwelling or duplex including, but not limited to, home lawn and ornamental irrigation, car washing, and other incidental uses provided that water is obtained from a single on-site withdrawal facility, such as a private irrigation well or surface water diversion, for each single family dwelling or duplex, provided that landscape irrigation is conducted in accordance with Chapters 40E-21 and 40E-24, F.A.C., or with any approved variance, and that the amount of water used is limited to only that necessary for efficient utilization.

(2) The filing of an application for a permit under this rule is not required.

(3) When reclaimed water is available, the use of a private irrigation well or surface water diversion for home lawn and ornamental irrigation is not authorized under this section. Reclaimed water is deemed available when reclaimed water is provided by a utility through a point of connection at the property boundary.

(4) Persons using or proposing to use water in a manner that differs from the conditions imposed by Chapter 40E-24, F.A.C., shall apply for a modification of this permit pursuant to subsection 40E-2.331(4), F.A.C.

(5) This no notice general permit by rule does not apply to domestic uses of water, such as water used for household purposes of drinking, bathing, cooking, sanitation, or other indoor uses, at single family dwellings and duplexes, which are addressed by subsection 40E-2.051(1), F.A.C.

Rulemaking Authority 373.044, 373.113, 373.118, 373.171 FS. Law Implemented 373.118, 373.219, 373.223 FS. History—New 3-15-10.

40E-2.091 Publications Incorporated by Reference.

The “Basis of Review for Water Use Permit Applications within the South Florida Water Management District – October 23, 2012,”

<http://www.flrules.org/Gateway/reference.asp?No=Ref-01630>, is incorporated by reference herein, and requires the use of the following forms, which are also incorporated by reference herein:

(1) Form 0188-QMQ, Quarterly Report of Withdrawals, October 2012, <http://www.flrules.org/Gateway/reference.asp?No=Ref-01564>, (referenced in Section 4.1);

(2) Form 0188-QASR, Quarterly Report of Injections and Withdrawals for Aquifer Storage and Recovery (ASR) Wells, October 2012,

<http://www.flrules.org/Gateway/reference.asp?No=Ref-01565>, (referenced in Section 4.1);

(3) Form 0188-QMQF, Quarterly Report of Withdrawals from Wells and Surface Water Pumps, October 2012, <http://www.flrules.org/Gateway/reference.asp?No=Ref-01566>, (referenced in Section 4.1);

(4) Form 0188-QBWDR, Quarterly Report of Bulk Water Delivered and Received, October 2012, <http://www.flrules.org/Gateway/reference.asp?No=Ref-01567>, (referenced in Section 4.1);

(5) Form 0188-QMON, Quarterly Report of Monitoring Requirements, October 2012, <http://www.flrules.org/Gateway/reference.asp?No=Ref-01568>, (referenced in Section 4.2);

(6) Form 0188-QCROP, Report of Planting and Harvest of Seasonal Crops, October 2012, <http://www.flrules.org/Gateway/reference.asp?No=Ref-01569>, (referenced in Section 5.2.3);

The “Basis of Review for Water Use Permit Applications within the South Florida Water Management District” and forms incorporated therein are available at no cost by contacting the South Florida Water Management District Clerk’s Office, 3301 Gun Club Road, West Palm Beach, FL 33406, 1(800)432-2045, ext. 6436 or (561) 682-6436.

Rulemaking Authority 373.044, 373.113, 373.118, 373.171 FS. Law Implemented 373.042, 373.0421, 373.109, 373.196, 373.219, 373.223, 373.224, 373.229, 373.232, 373.233, 373.236, 373.239, 373.250 FS. History—New 9-3-81, Formerly 16K-2.035(1), Amended 2-24-85, 11-21-89, 1-4-93, 4-20-94, 11-26-95, 7-11-96, 4-9-97, 12-10-97, 9-10-01, 12-19-01, 8-1-02, 6-9-03, 8-31-03, 4-23-07, 9-13-07, 2-13-08, 10-14-08, 7-2-09, 3-15-10, 3-18-10, 9-26-12, 10-23-12.

40E-2.101 Content of Application.

(1) Applications for permits required by this chapter shall be filed electronically at www.sfwmd.gov.ePermitting, or at the South Florida Water Management District Regulation Reception Desk, 3301 Gun Club Road, West Palm Beach, FL 33406, or at any of the District’s Service Centers. The addresses and phone numbers of the District’s Service Centers are online at www.sfwmd.gov, “Locations”.

(a) The application, Form No. 0645-W01, Water Use Permit Application, October 2012, <http://www.flrules.org/Gateway/reference.asp?No=Ref-01570>, shall include the following forms, if applicable:

(b) Form No. 0645-G60, Table A Description of Wells, October 2012, <http://www.flrules.org/Gateway/reference.asp?No=Ref-01571>, for permits with wells;

(c) Form No. 0645-G61-1, Table B Description of Surface Water Pumps, October 2012, <http://www.flrules.org/Gateway/reference.asp?No=Ref-01572>, for permits with pumps;

(d) Form No. 0645-G61-2, Table C Description of Culverts, October 2012, <http://www.flrules.org/Gateway/reference.asp?No=Ref-01573>, for permits with irrigation culverts;

(e) Form No. 0645-G65, Table D Crop Information, October 2012, <http://www.flrules.org/Gateway/reference.asp?No=Ref-01574>, for agricultural permits;

(f) Form No. 0645-G74, Table E Water Received From or Distributed to Other Entities, October 2012, <http://www.flrules.org/Gateway/reference.asp?No=Ref-01575>, for public water supply permits;

(g) Form No. 0645-G69, Table F Past Water Use & Table G Projected Water Use, October 2012, <http://www.flrules.org/Gateway/reference.asp?No=Ref-01576>, for public water supply permits;

(h) Form No. 0645-G70, Table H Projected Water Use, October 2012, <http://www.flrules.org/Gateway/reference.asp?No=Ref-01577>, for public water supply permits;

(i) Form No. 0645-G71, Table I Water Treatment Method and Losses, October 2012, <http://www.flrules.org/Gateway/reference.asp?No=Ref-01578>, for public water supply permits;

(j) Form No. 0645-G72, Table J Aquifer Storage and Recovery, October 2012, <http://www.flrules.org/Gateway/reference.asp?No=Ref-01579>, for public water supply permits;

and

(k) Form No. 0645-G73, Table K Water Supply System Interconnections, October 2012, <http://www.flrules.org/Gateway/reference.asp?No=Ref-01580>, for public water supply permits.

(l) The appropriate permit application processing fee required by Rule 40E-1.607, F.A.C.;

(m) The information required in Section 373.229(1), F.S.; and

(n) Information sufficient to show that the use meets the criteria and conditions established in Rule 40E-2.301, F.A.C.

(2) The application must be signed by the applicant or the authorized agent of the applicant.

(3) Applicants for a Dewatering Water Use permit shall electronically file or file with the District Form 0445, October 2012, <http://www.flrules.org/Gateway/reference.asp?No=Ref-01581>, Mining/Dewatering Permit Application.

(4) The forms identified in subsections (1) and (3) above are incorporated by reference herein and are available at no cost by contacting the South Florida Water Management District Clerk's Office, 3301 Gun Club Road, West Palm Beach, FL 33406, 1(800)432-2045, ext. 6436, or (561) 682-6436.

Rulemaking Authority 373.044, 373.113, 373.171 FS. Law Implemented 373.103(1), 373.219, 373.223, 373.229 FS. History—New 9-3-81, Amended 12-1-82, 2-24-85, 11-21-89, Repromulgated 1-4-93, Amended 4-20-94, 8-1-02, 10-23-12.

40E-2.301 Conditions for Issuance of Permits.

(1) In order to obtain a permit, permit renewal, or permit modification under this chapter, an applicant must give reasonable assurances that the proposed water use at the time the permit

application is deemed complete:

- (a) Will not cause harmful saline water intrusion;
 - (b) Will not harm offsite land uses;
 - (c) Will not cause harm to wetlands or other surface waters;
 - (d) Will not cause pollution of the water resources;
 - (e) Is otherwise a reasonable-beneficial use as defined in subsection 373.019(13), F.S., with consideration given to the factors set forth in Rule 62-40.410, F.A.C.;
 - (f) Will not interfere with presently existing legal uses;
 - (g) Is in accordance with Section 373.2295, F.S., concerning interdistrict transfer of groundwater and Section 373.223(3), F.S., concerning water transport and use of groundwater or surface water across county boundaries.
 - (h) Makes use of a reclaimed water source in accordance with the criteria contained in 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.
 - (i) Is in accordance with the established minimum flows and levels and implementation provisions in Chapter 373, F.S., this chapter and Chapter 40E-8, F.A.C.; and
 - (j) Is consistent with Sections 373.016 and 373.036, F.S., and otherwise is consistent with the public interest as prescribed by Chapter 373, F.S., and this chapter.
 - (k) Will not withdraw water reserved under Chapter 40E-10, F.A.C.
- (2) In order to satisfy the conditions for permit issuance in subsection (1), the permit applicant must provide reasonable assurances that the criteria in 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., are met.

Rulemaking Authority 373.044, 373.113, 373.118 FS. Law Implemented 373.036, 373.042, 373.103(4), 373.1501, 373.1502, 373.223, 373.229, 373.2295, 373.470 FS. History—New 8-14-02, Amended 8-31-03, 4-23-07, 2-13-08, 7-2-09.

40E-2.321 Duration of Permit.

General Duration Provision. When requested by an applicant, a consumptive use permit shall have a duration of 20 years provided the applicant provides sufficient data to demonstrate reasonable assurance that the proposed use meets the conditions for issuance for the requested 20 year permit duration; or otherwise, permits may be issued for a shorter duration that reflects the period for which such reasonable assurances can be provided. This determination will be made pursuant to requirements in Rule 40E-2.301, F.A.C., and 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.

Rulemaking Authority 373.044, 373.113, 373.171 FS. Law Implemented 373.236 FS. History—New 9-3-81, Amended 2-24-85, 4-20-94, 7-11-96, 8-31-03, 4-23-07, 2-13-08.

40E-2.331 Modification of Permits.

(1) A permittee shall apply to the District for approval of any modification of an unexpired permit pursuant to Section 373.239, F.S., and Rule 40E-1.609, F.A.C.

(2) Applications for modification, except letter modifications issued pursuant to subsection (4), shall contain the information required in Rule 40E-2.101, F.A.C., will be evaluated using the criteria specified in Rule 40E-2.301, F.A.C., and will be subject to the limiting conditions specified in Rule 40E-2.381, F.A.C. Modifications shall be approved if criteria in Rule 40E-

2.301, F.A.C., are met.

(3) Proposed increases in allocation will be treated as new uses to the extent the proposed allocation exceeds the existing allocation.

(4)(a) Modification of an existing water use permit shall be approved by letter, provided the permit is in compliance with all applicable limiting conditions and the modification request:

1. Does not result in an increase in the amount of the permit allocation;

2. Does not modify the existing permit expiration date, except that when the permit duration is based upon the current lease expiration date, the permit duration shall be extended by letter modification to the new lease date, but shall not exceed the applicable permit duration pursuant to Rule 40E-2.321, F.A.C.;

3. Does not potentially interfere with any presently existing legal use of water, cause environmental harm, saltwater intrusion, pollution of the water resources, harm to offsite land uses, does not withdraw water reserved under Chapter 40E-10, F.A.C., or does not otherwise raise issues requiring a Staff determination of whether such impacts would occur pursuant to 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.; and

4. Does not change the permitted withdrawal source(s) or use classification.

5. Does not result in a modification of the permit pursuant to Section 373.239(2), F.S.

6. Does not allow more cumulative days and time to conduct landscape irrigation pursuant to Chapter 40E-24, F.A.C., for those permits issued pursuant to Rule 40E-2.061, F.A.C., and those permits classified as landscape irrigation use.

(b) The timeframes set forth in Rule 40E-1.603, F.A.C., shall apply to the processing of letter modifications.

Rulemaking Authority 373.044, 373.113 FS. Law Implemented 373.079, 373.083, 373.223, 373.229, 373.239 FS. History—New 9-3-81, Formerly 16K-2.09(1), Amended 4-20-94, 7-11-96, 4-9-97, 12-10-97, 8-1-02, 4-23-07, 2-13-08, 7-2-09, 3-15-10, 10-23-12.

40E-2.341 Revocation of Permits.

Violations of this chapter may result in the revocation or suspension of the authorization in whole or in part in accordance with the provisions of Chapter 373, F.S., including Sections 373.119 and 373.243, Chapter 120, F.S., and Rules 40E-1.609 and 28-106.2015, F.A.C.

Rulemaking Authority 373.044, 373.113 FS. Law Implemented 120.60(6), 373.103(4), 373.219, 373.229 FS. History—New 4-20-94, Amended 7-2-98, 10-23-12.

40E-2.351 Transfer of Permits.

A permittee must comply with the requirements of Rule 40E-1.6107, F.A.C., in order to obtain a permit transfer to a new permittee. If the permit transfer is in conjunction with an application for permit modification, the permit shall be transferred at the time of permit modification if all applicable permit transfer criteria are met. Upon approval, all terms and conditions of the permit shall be binding on the transferee.

Rulemaking Authority 373.044, 373.113 FS. Law Implemented 373.223, 373.229, 373.239 FS. History—New 9-3-81, Formerly 16K-2.09(2), Amended 4-20-94.

40E-2.381 Limiting Conditions.

The District shall impose on any permit granted under this chapter such reasonable standard and special permit conditions as are necessary to assure that the permitted use or withdrawal will be

consistent with the overall objectives of the District, will not be harmful to the water resources of the District, is reasonable-beneficial, will not interfere with any presently existing legal uses, and is consistent with the public interest. Standard permit conditions in Section 5.1 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 set forth in the permit. Special permit conditions, including those specified in Section 5.2 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 set forth in the permit.

Rulemaking Authority 373.044, 373.113, 373.171 FS. Law Implemented 373.042, 373.0421, 373.079, 373.083, 373.219(1) FS. History—New 9-3-81, Amended 2-24-85, 7-26-87, 4-20-94, 7-11-96, 4-9-97, 12-10-97, 9-10-01, 8-1-02, 4-23-07, 2-13-08, 10-23-12.

40E-2.441 Temporary Permits.

Rulemaking Authority 373.044, 373.113 FS. Law Implemented 373.244 FS. History—New 9-3-81, Amended 4-20-94, Repealed by Section 3, Chapter 2012-31, Laws of Florida, 5-27-12.

40E-2.451 Emergency Authorization.

(1) Permission to begin use, withdrawal, or diversion of water prior to the issuance of a permit may be applied for in writing, when emergency conditions exist which would justify such permission. However, no such permission shall be granted unless the use, withdrawal, or diversion is already being considered for a permit under Rule 40E-2.041, F.A.C. A serious set of unforeseen or unforeseeable circumstances must exist to create an emergency. Mere carelessness or lack of planning on the part of the applicant shall not be sufficient grounds to warrant the granting of emergency authorization.

(2) Emergency authorizations shall be administered pursuant to Rule 40E-0.108, F.A.C.

Rulemaking Authority 373.044, 373.113 FS. Law Implemented 120.60(5), 373.219 FS. History—New 9-3-81, Formerly 16K-2.11, Amended 4-20-94, 7-2-98, 10-23-12.

40E-2.501 Permit Classification.

Each water use permit shall be classified according to source, use and method of withdrawal. The source use and method of withdrawal classes are listed in Rules 40E-21.631 through 40E-21.691, F.A.C.

Rulemaking Authority 373.044, 373.113 FS. Law Implemented 373.246 FS. History—New 9-3-81, Formerly 16K-2.12(2), Amended 7-4-82, 10-23-12.