

## Notice of Proposed Rule

### WATER MANAGEMENT DISTRICTS South Florida Water Management District

RULE NO.: RULE TITLE:

40E-8.221: Minimum Flows and Levels (MFLs): Surface Waters

**PURPOSE AND EFFECT:** In 2010, District staff received Governing Board direction and funding to implement research and studies on the Caloosahatchee River to re-evaluate the existing Caloosahatchee River Minimum Flow and Minimum Water Level (MFL). The current MFL criteria, adopted in 2001, is based on the salinity tolerance of a single species-tape grass (*Vallisneria americana*). Eleven new scientific studies on the Caloosahatchee River, utilizing a resource-based approach with multiple ecological indicators, were conducted. In 2016, the 11 studies were presented for review and technical input at a 2-day Public Science Symposium in Ft. Myers. Since then, additional scientific analyses and modeling were conducted to develop revised MFL criteria and this work was documented in a draft MFL Technical Document. In 2017, a 5-member panel of independent scientific experts reviewed the draft MFL Technical Document, visited the Caloosahatchee River, and held a public panel session. In 2018, two rule development workshops were held in Ft Myers. The District received a very positive peer review of the MFL technical document and the scientific approaches/methodologies used to revise the MFL criteria.

**SUMMARY:** Based on this compilation of scientific studies, monitoring, modeling, technical evaluations and public input, staff proposes to amend Rule 40E-8.221, F.A.C., to increase the MFL flow criteria at the S-79 structure from 300 cubic feet per second (cfs) to 400 cfs and to revise the duration and return frequency components of the MFL criteria.

**SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS AND LEGISLATIVE RATIFICATION:** The Agency has determined that this will not have an adverse impact on small business or likely increase directly or indirectly regulatory costs in excess of \$200,000 in the aggregate within one year after the implementation of the rule. A SERC has not been prepared by the Agency.

The revision of the Caloosahatchee MFL rule criteria (salinity and timing of exceedances) are irrelevant to the evaluation of an application, because all the water from the MFL recovery strategy (C-43 Reservoir water) is protected from allocation by a water reservation rule (40E-10.041, FAC). The current MFL and a revised MFL criteria share the same recovery strategy. Therefore, there would be no adverse impacts to small businesses through water use regulation. Additionally, there are no anticipated changes to the ways in which the rule is implemented or enforced. Using the revised MFL criteria, there are no additional regulatory fees, modeling analysis, or other technical analyses required to meet the water use regulatory criteria outlined in the Applicant's Handbook for Water Use Permit Applications. The regulatory permitting process is identical. As such, there would be no additional direct or indirect regulatory costs.

The Agency has determined that the proposed rule is not expected to require legislative ratification based on the statement of estimated regulatory costs or if no SERC is required, the information expressly relied upon and described herein: The District has completed the Governor's Office of Fiscal Accountability and Regulatory Reform (OFARR) the "Is a SERC Required?" form, which is available upon request. Based on the completed "Is a SERC Required?" form, the proposed rule amendments will not require legislative ratification pursuant to the subsection 120.541(3), F.S.

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.

**RULEMAKING AUTHORITY:** [373.042](#), [373.044](#), [373.113](#), [373.119](#), [373.129](#), [373.136](#), [373.171](#) [F.S.](#)

LAW IMPLEMENTED: [373.016](#), [373.036](#), [373.042](#), [373.0421](#), [373.175](#), [373.216](#), [373.219](#), [373.223](#), [373.246](#), [373.709 F.S.](#)

A HEARING WILL BE HELD AT THE DATE, TIME, AND PLACE SHOWN BELOW:  
DATE AND TIME: September 13, 2018, beginning at 9:00 a.m.

PLACE: South Florida Water Management District, B-1 Auditorium, 3301 Gun Club Road, West Palm Beach, FL 33406

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 at (561) 682-6805. 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: Don Medelli at dmedelli@sfwmd.gov or call (561) 682-6340.

THE FULL TEXT OF THE PROPOSED RULE IS:

**40E-8.221 Minimum Flows and Levels (MFLs): Surface Waters.**

The MFLs contained in this Part identify the point at which further withdrawals would cause significant harm to the water resources, or ecology, of the area as applicable, pursuant to Sections 373.042 and 373.0421, F.S. It is the District's intent to correct or prevent the violation of these MFLs through management of the water resources and implementation of a recovery strategy.

(1) No Change.

(2) Caloosahatchee River. The MFL for the Caloosahatchee River is the 30-day moving average flow of 400 cubic feet per second (cfs) at S-79. A minimum mean monthly flow of 300 CFS is necessary to maintain sufficient salinities at S-79 in order to prevent a MFL exceedance. A MFL exceedance occurs during a 365-day period, when:

(a) A MFL exceedance occurs during a 365-day period when the 30-day moving average flow at S-79 is below 400 cfs and the 30-day moving average salinity exceeds 10 at the Ft. Myers salinity monitoring station (located at latitude 26° 38' 57.84" N, longitude 81° 52' 5.68" W). Salinity at the Ft. Myers salinity monitoring station shall be measured at 20% of the total river depth at mean low water. A 30-day average salinity concentration exceeds 10 parts per thousand at the Ft. Myers salinity station (measured at 20% of the total river depth from the water surface at a location of latitude 263907.260, longitude 815209.296); or

(b) A MFL violation occurs when a MFL exceedance occurs more than once in a 5-year period. A single, daily average salinity exceeds a concentration of 20 parts per thousand at the Ft. Myers salinity station. Exceedance of either paragraph (a) or (b), for two consecutive years is a violation of the MFL.

(3)-(5) No Change.

*Rulemaking Authority §§ 9, 10 P.L. 83-358, 373.042, 373.044, 373.113, 373.119, 373.129, 373.136, 373.171 FS. Law Implemented 373.016, 373.036, 373.042, 373.0421, 373.175, 373.216, 373.219, 373.223, 373.246, 373.709 FS. History—New 9-10-01, Amended 4-1-03, 12-12-06.*

NAME OF PERSON ORIGINATING PROPOSED RULE: Terrie Bates, Water Resource Division Director

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

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: July 12, 2018

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAR: January 26, 2018