

## Notice of Proposed Rule

### **WATER MANAGEMENT DISTRICTS** **South Florida Water Management District**

RULE NO.: RULE TITLE:

[40E-8.021](#): Definitions

[40E-8.421](#): Prevention and Recovery Strategies

[40E-8.431](#): Consumptive Use Permits

**PURPOSE AND EFFECT:** The District proposes to amend these rules in accordance with the biennial review contemplated by Section 120.74(1), Fla. Stat., to identify and correct deficiencies in its rules; clarify and simplify its rules; delete obsolete or unnecessary rules or delete rules that are redundant of statutes.

**SUMMARY:** The proposed amendments correct and update statutes cited in the rule text, include abbreviations that are abbreviated earlier in the chapter, and add a reference to the rule in which the Applicant's Handbook for Water Use Permit Applications is incorporated.

**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 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 proposed amendments are not substantive in nature and have no additional adverse impact on small business and no increase in regulatory costs.

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:** [373.044](#), [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.

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

**THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS:** Kellie Madison, Section Leader, Technical Services, South Florida Water Management District, 3301 Gun Club Road, West Palm Beach, FL 33406, toll free: (800) 432-2045, ext. 6906, direct: (561) 682-6906, email: [kmadison@sfwmd.gov](mailto:kmadison@sfwmd.gov), or Jennifer Brown, Senior Attorney, Office of Counsel,

South Florida Water Management District, 3301 Gun Club Road, West Palm Beach, FL 33406, toll free: (800) 432-2045, ext. 2258, direct: (561) 682-2258, email: jebrown@sfwmd.gov. For procedural questions, contact Jan Sluth, Sr. Paralegal, South Florida Water Management District, 3301 Gun Club Road, West Palm Beach, FL 33406, toll free: (800) 432-2045, ext. 6299, direct: (561) 682-6299, email: jsluth@sfwmd.gov.

THE FULL TEXT OF THE PROPOSED RULE IS:

**40E-8.021 Definitions.**

(1) through (25) No Change.

(26) Regional Water Supply Plan – means a plan approved by the District pursuant to Section 373.709 ~~373.0361~~, F.S.

(27) through (31) No Change.

*Rulemaking Authority §§ 9, 10 P.L. 83-358, 373.044, 373.113, 373.119, 373.129, 373.136, 373.171 FS. Law Implemented 373.016, 373.036, ~~373.0361~~, 373.042, 373.0421, 373.175, 373.216, 373.219, 373.223, 373.246, 373.709, FS. History—New 9-10-01, Amended 11-11-02, 4-1-03, 1-19-06, 12-12-06, 10-23-12, \_\_\_\_\_.*

**40E-8.421 Prevention and Recovery Strategies.**

(1) (a) through (e) No Change.

(f) In order to ensure that the actual and projected performance of prevention and recovery strategies approved in the regional waters supply plans is sufficient to meet water resource needs, including MFLs, and the existing and projected reasonable-beneficial uses, the District will update recovery and prevention strategies on a periodic basis, based on new information and system performance. The performance of the recovery and prevention strategies in comparison to the performance projected in the regional water supply plans, will be assessed by the District for each recovery or prevention strategy phase. Based on the actual performance and new information obtained regarding the water resources, the District will review and revise, if necessary, recovery and prevention strategies through the regional water supply plan update process every five years, or sooner, as required by Section 373.709 ~~373.0361~~, F.S. At that time, the governing board will determine if rule modifications to the MFL or recovery and prevention strategies are necessary to continue to meet the requirements of Sections 373.042 and 373.0421, F.S.

Figure 1 No Change.

(2) (a) through (d) No Change.

(e) Lake Okeechobee. Under implementation of the Water Supply and Environment (~~WSE~~) lake regulation schedule assumptions, the Lake Okeechobee MFL was not projected to be violated and an MFL prevention strategy was adopted. However, due to changes in the Lake Okeechobee Regulation Schedule (~~LORS~~), which received final approval in April 2008, the Lake MFL is projected to be violated and an MFL recovery strategy is necessary. This recovery strategy will remain in effect until the MFL criteria is met pursuant to Section 373.0421, F.S. The Lake Okeechobee MFL recovery strategy shall consist of four components, as fully described in the LEC Regional Water Supply Plan, Appendix H, as updated in October 2008. These components consist of:

1. through 4. No Change.

(3)(a) through (e) No Change.

(4) (a) through (d) No Change.

(5) No Change.

(6) No Change.

(a) The Northwest Fork of the Loxahatchee River is currently not meeting the MFL and requires implementation of a recovery strategy to achieve the MFL as soon as practicable, consistent with Section 373.0421, F.S. The recovery strategy consists of projects contained within the following approved plans: the ~~Lower East Coast Regional Water Supply Plan (LEC Plan)~~, the ~~Comprehensive Everglades Restoration Plan (CERP)~~, and the Northern Palm Beach County Comprehensive Water Management Plan (NPBCCWMP). Four phases of recovery are identified in the Technical Documentation to Support Development of Minimum Flows and Levels for the Northwest Fork of the Loxahatchee River, November 2002, which are projected to increase flows to meet the MFL for the Northwest Fork of the Loxahatchee River. As part of the recovery strategy, as provided in this rule, the consumptive use permitting and water shortage requirements in this Chapter and Chapters 40E-2 and 40E-21, F.A.C., and the “Applicant’s Handbook for Water Use Permit Applications within the South Florida Water Management District,” incorporated by reference in Rule 40E-2.091, F.A.C., including Subsection 3.2.1.E. regarding Restricted Allocation Areas for Lower East Coast Everglades Waterbodies and North Palm Beach County/Loxahatchee River Watershed Waterbodies, shall apply to consumptive use direct and indirect withdrawals from surface and groundwater sources from the Northwest Fork of the Loxahatchee River and those areas directly tributary to the Northwest Fork.

(b) In addition to implementation of this MFL recovery strategy, the District commits to restore freshwater flows to the Northwest Fork of the Loxahatchee River above the MFL through Chapter 373, F.S., and the ~~CERP Comprehensive Everglades Restoration Plan~~ and its associated authorities. The District will continue to partner with the ~~DEP Florida Department of Environmental Protection~~ in establishing a practical restoration goal and plan for the

Loxahatchee River watershed. Recognizing that natural seasonal fluctuations in water flows are necessary to ensure that the functions of the Loxahatchee River are protected, this restoration goal and plan will include a more complete set of seasonally managed flow criteria for the river that are driven primarily by natural rainfall and runoff patterns within the watershed.

(c) and (d) No Change.

(e) It is the District's intent to implement, along with other partners, projects to meet the practical restoration goal developed according to paragraph (b). Projects contained in the CERP Comprehensive Everglades Restoration Plan, the LEC Plan and the NPBCCWMP will provide increased storage and conveyance within the basin with a goal of providing more water for restoration of the Northwest Fork of the Loxahatchee River.

(f) and (g) No Change

Map 1 - No Change

(7) and (8) No Change.

Map 2 – No Change.

*Rulemaking Authority §§ 9, 10 P.L. 83-358, 373.044, 373.113, 373.171 FS. Law Implemented 373.016, 373.036, ~~373.0361~~, 373.042, 373.0421, 373.175, 373.216, 373.219, 373.223, 373.246, 373.709, FS. History–New 9-10-01, Amended 11-11-02, 4-1-03, 1-19-06, 12-12-06, 4-23-07, 10-14-08, 10-23-12, 7-14-14, \_\_\_\_\_.*

#### **40E-8.431 Consumptive Use Permits.**

(1) Consumptive use permit applications that propose to withdraw water directly or indirectly from a MFL water body, that meet the conditions for permit issuance in Part II of Chapter 373, F.S.; (including implementing rules in this chapter, Chapter 40E-2, F.A.C., and the “Applicant’s Handbook for Water Use Permit Applications within the South Florida Water Management District,” incorporated by reference in Rule 40E-2.091, F.A.C., as applicable), and are consistent with the approved recovery and prevention strategies under Section 373.0421, F.S., will be permitted. Consumptive use permit applications will be reviewed based on the recovery and prevention strategy approved at the time of permit application review.

(2) and (3) No Change.

*Rulemaking Authority 373.044, 373.113, 373.171 FS. Law Implemented 373.016, 373.036, ~~373.0361~~, 373.042, 373.0421, 373.709, FS. History–New 9-10-01, Amended 7-14-14, \_\_\_\_\_.*

NAME OF PERSON ORIGINATING PROPOSED RULE: Maria C. Clemente, Bureau Chief,  
Water Use Bureau

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: South Florida

Water Management District Governing Board

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: May 14, 2015

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAR: April 20,  
2015