

The Permittee shall mitigate harm to offsite land uses that was caused in whole or in part by the permittee's withdrawals, consistent with the approved mitigation plan. The mitigation plan will require a permittee to mitigate immediately, or upon the actual occurrence of harm. The determination of when mitigation is required is based upon the likelihood that the harm is projected to occur.

3.7 Interference with Existing Legal Users

To obtain a water use permit the applicant must provide reasonable assurance that it will not interfere with any existing legal use of water, pursuant to Section 373.223(1)(b), F.S. In general, a permit applicant must provide reasonable assurances that the proposed withdrawal of water, together with other exempt or permitted withdrawals within the cone of influence of the proposed withdrawal, will not result in interference with existing legal uses.

A. Definition of "Existing Legal Use"

The determination of whether a water use is an existing legal use in the relation to the proposed withdrawal must be made under this analysis. Existing legal uses are protected from interference from other existing legal uses established subsequent to the establishment of the existing legal use. An existing legal use is defined by the terms and limiting conditions of the permit authorizing the withdrawal, if any. A use of water not permitted nor exempt pursuant to Part II of Chapter 373, F.S., is not an existing legal use.

The following criteria describe application of the existing legal use protection when permit modifications or renewals occur:

- (1) When a permit modification is considered under this rule, only the existing legal uses existing at that time of the pending application are considered existing legal uses. The responsibility to mitigate for interference to an existing legal use only extends to interference to existing legal uses that predate such request and only applies to impacts that occur due to the requested modification.
- (2) For permit renewals, the applicant is required to demonstrate that the allocation being renewed will not interfere with existing legal uses that existed at the time the allocation, or portions of the allocation, were first authorized either through an original permit or permit modification, consistent with the above provisions.
- (3) Individual uses served by a permitted diversion and impoundment permit, are considered to be existing legal uses for purposes of this rule. However, interruption of service to uses served by a diversion and impoundment project, when such interruption is due to project operations

of the diversion and impoundment project, shall not be considered interference under this Section.

B. Definition of Interference with Existing Legal Use

Interference to an existing legal use is defined as an impact that occurs under hydrologic conditions equal to or less severe than a 1 in 10 year drought event that results in the:

- (1) Inability to withdraw water consistent with provisions of the permit or exempt use, such as when remedial structural or operational actions not materially authorized by existing permits must be taken to address the interference;
- (2) Change in the quality of water pursuant to primary State Drinking Water Standards to the extent that the water can no longer be used for its authorized purpose, or when such change is imminent; or
- (3) Inability of an existing legal user to meet its permitted demands without exceeding the permitted allocation.

C. Mitigation Requirements for Interference with Existing Legal Uses

If the permit applicant cannot provide reasonable assurance that a proposed withdrawal will not interfere with existing legal uses, the applicant must submit a mitigation plan. The mitigation plan shall identify actions necessary to mitigate for interference once the impact has occurred, or is imminent. Such actions must be sufficient to provide water consistent with the authorized use and will require a permit modification if required by Rule 40E-2.331, F.A.C. As necessary to offset the interference, mitigation will include pumpage reduction, replacement of the impacted individual's equipment, relocation of wells, change in withdrawal source, or other means.

Once the permit is issued, the Permittee shall mitigate interference with existing legal uses that was caused in whole or in part by the permittee's withdrawals, consistent with the approved mitigation plan. The mitigation plan will require a permittee to mitigate immediately, or upon the actual occurrence of an interference. The determination of when mitigation is required is based upon the likelihood that the interference is projected to occur.

3.8 Otherwise Harmful

The issuance of a permit shall be denied if the withdrawal or use of water would otherwise be harmful to the water resources.