

## Notice of Proposed Rule

### WATER MANAGEMENT DISTRICTS

#### South Florida Water Management District

RULE NO.: RULE TITLE:

[40E-10.041](#): Water Reservation Areas: Lower West Coast Planning Area

[40E-10.051](#): Water Reservation Areas: Upper East Coast Planning Area

[40E-10.061](#): Water Reservation Areas: Lower East Coast Planning Area

PURPOSE AND EFFECT: During the rulemaking effort to reserve water for the Caloosahatchee River (C-43) West Basin Storage Reservoir Project (C-43 Reservoir), the District included language stating: “all presently existing legal uses of water shall be protected so long as such use is not contrary to the public interest.” The inclusion of this language was challenged in DOAH Case No. 14-1329RP. The administrative law judge determined the language was invalid, stating that “[e]xisting legal uses are presumed not contrary to the public interest unless and until the District determines otherwise.” Language similar to that found invalid in C-43 Reservoir reservation case exists in the water reservations for Picayune Strand, Fakahatchee Estuary, North Fork of the St. Lucie River, and Nearshore Central Biscayne Bay, in subsections [40E-10.041\(1\)](#) and [\(2\)](#), [40E-10.051](#), and [40E-10.061\(2\)](#), F.A.C., respectively.

SUMMARY: The language "all presently existing legal uses of water shall be protected so long as such use is not contrary to the public interest" will be deleted in the text for the following water reservations: 1) Picayune Strand; 2) Fakahatchee Estuary; 3) North Fork of the St. Lucie River; and 4) Nearshore Central Biscayne Bay.

#### 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 District has completed for 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 are not expected to require legislative ratification pursuant to 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: [373.044](#), [373.113](#), [373.171](#), F.S.

LAW IMPLEMENTED: [373.016](#), [373.026](#), [373.036](#), [373.1501](#), [373.1502](#), [373.219](#), [373.223](#), [373.4592](#), [373.4595](#), [373.430](#), F.S.

A HEARING WILL BE HELD AT THE DATE, TIME AND PLACE SHOWN BELOW:

DATE AND TIME: February 9, 2017, beginning 9:00 a.m.

PLACE: Seminole Tribe of Florida, Hollywood Seminole Indian Reservation Headquarters, 6300 Stirling Road, Hollywood, FL 33024. Parking for the meeting will be located at Seminole Tribe of Florida, 5701 Stirling Road, Hollywood, FL. A shuttle will take you to and from the meeting location. The directions, map and parking information will be available on the District's website at <https://www.sfwmd.gov/calendar/day/201702> on January 13, 2017.

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's office, telephone: (800) 432-2045, ext. 6805, or (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: Jennifer Brown, Esq., South Florida Water Management District, 3301 Gun Club Road, West Palm Beach, FL 33406, telephone: (561) 682-6278, email: [jebrown@sfwmd.gov](mailto:jebrown@sfwmd.gov), or Jan Sluth, CP, FRP, South Florida Water Management District, 3301 Gun Club Road, West Palm Beach, FL 33406, telephone: (561) 682-6299, email: [jsluth@sfwmd.gov](mailto:jsluth@sfwmd.gov).

THE FULL TEXT OF THE PROPOSED RULE IS:

**40E-10.041 Water Reservation Areas: Lower West Coast Planning Area.**

(1) (a) and (b) No Change.

~~Notwithstanding the above, presently existing legal uses for the duration of the permit existing on July 2, 2009, are determined to be not contrary to the public interest, pursuant to Section 373.223(4), F.S.~~

(2) (a) and (b) No Change.

~~Notwithstanding the above, presently existing legal uses for the duration of the permit existing on July 2, 2009, are determined to be not contrary to the public interest, pursuant to Section 373.223(4), F.S.~~ Reservations contained in this subparagraphs 1. and 2. above shall be reviewed in light of changed conditions or new information by December 31, 2014.

(3) No Change.

*Rulemaking Authority 373.044, 373.113, 373.171 FS. Law Implemented 373.016, 373.026, 373.036, 373.1501, 373.1502, 373.219, 373.223, 373.4592, 373.4595, 373.470 FS. History—New 7-2-09, Amended 3-18-10, 7-21-13, 7-16-14,\_\_\_\_\_.*

**40E-10.051 Water Reservation Areas: Upper East Coast Planning Area.**

North Fork of the St. Lucie River, as defined in subsection 40E-10.021(3), F.A.C.:

Surface waters up to and including the mean monthly flow of 130 cubic feet per second flowing over the Gordy Road Structure from November 1st through May 31st; see Appendix 2, Figure 2-

2; are reserved from allocation. The water reserved under this rule will be available for fish and wildlife upon formal determination of the Governing Board, pursuant to state and federal law, that any one or all of the Comprehensive Everglades Restoration Plan's C-23/C-24 North and South Reservoirs and STA Project are operational. Reservations contained in this rule and the criteria contained in section 3.11.2 of 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., shall be revised pursuant to Section 373.223(4), F.S., in light of changed conditions or new information and concurrent with the approval specified, above.

~~Notwithstanding the above, presently existing legal uses for the duration of a permit existing on March 18, 2010, are determined to be not contrary to the public interest pursuant to Section 373.223(4), F.S.~~

*Rulemaking Authority 373.044, 373.113, 373.171 FS. Law Implemented 373.016, 373.026, 373.036, 373.1501, 373.1502, 373.219, 373.223, 373.4592, 373.4595, 373.470 FS. History—New-3-18-10, Amended 7-21-13, 7-14-14,\_\_\_\_\_.*

**40E-10.061 Water Reservation Areas: Lower East Coast Planning Area.**

(1) and (2) No Change.

~~Notwithstanding the above, presently existing legal uses for the duration of a permit existing on July 18, 2013, are determined to be not contrary to the public interest pursuant to Section 373.223(4), F.S.~~

Reservations contained in the section shall be reviewed in light of changed conditions or new information.

*Rulemaking Authority 373.044, 373.113, 373.171 FS. Law Implemented 373.016, 373.026, 373.036, 373.1501, 373.1502, 373.219, 373.223, 373.4592, 373.4595, 373.470 FS. History—New 7-21-13,\_\_\_\_\_.*

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

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

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: November 10, 2016

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAR: November 23, 2016