

Notice of Development of Rulemaking

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.

SUBJECT AREA TO BE ADDRESSED: 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. The preliminary draft rule text is available on the District's website at: www.sfwmd.gov/reservations, or may be obtained at no cost by contacting the persons listed below.

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.

IF REQUESTED IN WRITING AND NOT DEEMED UNNECESSARY BY THE AGENCY HEAD, A RULE DEVELOPMENT WORKSHOP WILL BE NOTICED IN THE NEXT AVAILABLE FLORIDA ADMINISTRATIVE REGISTER.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE

DEVELOPMENT AND A COPY OF THE PRELIMINARY DRAFT, IF AVAILABLE, 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, 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.

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS AVAILABLE
AT NO CHARGE FROM THE CONTACT PERSON LISTED ABOVE.