Florida Department of Environmental Protection

Marjory Stoneman Douglas Building
3900 Commonwealth Boulevard
Tallahassee, Florida 32399-3000

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Governor

Jennifer Carroll
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Herschel T. Vinyard Jr.
Secretary

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THROUGH: Herschel T. Vinyard Jr. HTV
Secretary

FROM: Greg Munson GM
Deputy Secretary for Water Policy and Ecosystem Restoration

DATE: March 23, 2012

SUBJECT: Guidance for Consumptive Use Permit Compliance Reporting Requirements and Review

Consumptive use permitting is one of the critical programs implemented by the Water Management Districts (Districts) to manage our water resources. The permitting program ensures that water use is not harmful to the water resources of the area, is reasonable-beneficial, does not interfere with existing legal uses and is consistent with the public interest. The permitting program also provides water users with a level of certainty that water will be available for their use, consistent with the conditions of the permit, for the duration of the permit.

The Department recently conducted stakeholder sessions around the state with water users and environmental interests seeking input on ways to improve the consistency and effectiveness of the consumptive use permitting program. A frequent concern expressed by water users relates to the implementation of the 10-year compliance review included as part of 20-year or longer duration permits. This memo provides guidance for the management of 10-year compliance reports in the consumptive use permitting process in order to ensure that the reviews are being conducted appropriately and consistently among the Districts.

Section 373.236(4), F.S. provides:

> "Where necessary to maintain reasonable assurance that the conditions for issuance of a 20-year permit can continue to be met, the governing board or department, in addition to any conditions required pursuant to s. 373.219, may require a compliance report by the permittee every 10 years during the term of a permit. The Suwannee River Water Management District may require a compliance report by the permittee every 5 years through July 1, 2015, and thereafter every 10 years during the term of the permit. This report shall contain sufficient data to maintain reasonable assurance that the initial conditions for permit issuance are met. Following review of this report, the governing board or the department may modify the permit to ensure that the use meets the conditions for issuance. Permit modifications pursuant to this subsection shall not be subject to competing applications, provided there is no increase in the permitted allocation or permit duration, and no change in source, except for changes in source requested by the District. This subsection shall not be construed to limit the existing authority of the department or the governing board to modify or revoke a consumptive use permit."

Effective immediately, the following guidance will apply to Consumptive Use Permitting 10-year compliance reports:

The 10-Year Review Should Not be Treated as a New Permit or Renewal Application

The District should not allow the 10-year compliance report to result in a situation where the 20-year permit essentially becomes a 10-year permit by treating the 10-year compliance report like a new permit application or renewal. Under s. 373.236(4) Florida Statutes, the compliance report is to contain sufficient data to maintain reasonable assurance that the *original conditions for issuance* are met. The 10-year compliance report should not be used to make the permittee reaffirm the appropriateness of the permit or re-justify the permit based on new rules that have been adopted since the permit was originally issued.

The focus of the 10-year compliance report should be reviewing the data and information provided to the District as the result of the original permit conditions, or considering new information about the condition of the water resources or the effect of the withdrawal that was not available to inform the original permit decision. This information should be used to confirm the assumptions and conclusions made when the permit was issued. If this information indicates that the original conditions for issuance are not being met, only then should the compliance review result in permit modifications. For example, wetland monitoring data may indicate that unanticipated harm is occurring from the permitted withdrawal that would need to be addressed through changes to the permit.

If the 10-year compliance report shows the permittee is still in compliance with the initial conditions for issuance and all of its permit conditions, the District should allow the permittee to continue to operate without modification to its CUP.

Avoid Requesting Duplicate Information

Permittees should not be required to resubmit, as part of the 10-year permit compliance review, data and analyses which have otherwise been submitted to the District in periodic or annual reports, facilities plans, as part of monitoring requirements or in other related documents. The monitoring data submitted according to the permit conditions should be reviewed upon receipt to identify any problems and needed corrective actions to maintain compliance with the permit conditions. For the 10-year compliance report, the permittee should only be required to submit additional information that has not previously been submitted, or that summarizes previous data.

Reduction of Allocations During the Permit Term as a Result of Reduced Water Demand Should be Rare

Actual demand information submitted as part of the 10-year compliance report may be lower than the demand projections that were used during the original application review. This may occur due to enhanced water conservation, unanticipated changes in growth rates or changing market conditions for agricultural commodities. Generally, this should not result in reduced allocations as discussed below.

Water Conservation Savings

The Department recognizes that effective water conservation is critical to sustaining our water supplies, meeting future needs and reducing impacts on our fragile natural systems. Progress toward this important goal can be unintentionally frustrated during the compliance reporting process when permitted allocations are reduced because of the decline in projected water demand due to conservation measures. This practice may have the unintended effect of penalizing permittees for the successful implementation of conservation measures, and rewarding permittees for the wasteful use of water by keeping their permitted allocations intact.

Therefore, the Districts should continue to condition consumptive use permits on the implementation of water conservation measures and may require periodic updates to the water conservation plan, if provided for in the permit conditions, to achieve required targets or incorporate improved best management practices. However, the Districts should not use the 10-year compliance report or similar periodic report required by permit condition to reconsider the permittee's allocation for water based on

demand reductions resulting from successful water conservation. Doing so removes the incentive for permit holders to pursue necessary water conservation measures.

Differences Between Projected and Realized Growth

Changes in socio-economic conditions may result in realized demands for potable water supply that are different from the projected demands on which the permit allocation was based. To ensure that allocations continue to be based on reasonable-beneficial uses, but also that reductions are not based on short-term decreases in demand, a reduction in permitted allocation during the permit term should only be considered when:

- The difference in the projected demand and the water actually needed is considerable; and
- There is no reasonable likelihood that the allocation will be needed during the remainder of the permit term including consideration of a rebound in economic conditions.

Changes in Agricultural Markets

In response to changing market conditions, an agricultural permittee may choose to grow a crop during a given year that requires less water than the crop originally envisioned when the permit was issued. Because such a choice may change again, the permitted allocation should not be reduced during the 10-year compliance review. This will allow the permittee the flexibility to choose crops in future years in response to market conditions, as long as the originally permitted allocation is not exceeded.

Conclusion

This guidance will ensure that the 10-year compliance review is confined to its appropriate role as defined by Florida Statute, as well as encourage water conservation, provide appropriate certainty to permittees that their reasonable-beneficial needs will be met for the permit term and ensure water is available for new, economically beneficial activities when appropriate. It also furthers the statutory policy to promote the availability of sufficient water for all existing and future reasonable-beneficial uses and natural systems.

HTV/GM/as

cc: Ann B. Shortelle, Ph.D., Director, Office of Water Policy, FDEP