

CHAPTER 40A-2

REGULATION OF CONSUMPTIVE USES OF WATER

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40A-2.011 Policy and Purpose.

The purpose of this chapter is to implement the provisions of Part II of Chapter 373, F.S., ~~and~~ the Water Resource Implementation Rule set forth in Chapter 62-40, F.A.C., and Regulation of the Consumptive Uses of Water set forth in Chapter 62-41, F.A.C. Additional rules relating to water use are found in Chapter 40A-1, F.A.C., entitled General and Procedural, Chapter 40A-3, F.A.C., entitled Regulation of Wells and Chapter 40A-21, F.A.C., entitled Water Shortage Plan.

Rulemaking Authority 373.044, 373.113, 373.171 FS. Law Implemented 373.171, 373.216, 373.219 FS.

History—New 10-1-82, Amended 1-5-86, 10-1-95, 7-1-98, 5-29-14,_____.

40A-2.061 General Water Use Permits by Rule.

(1) General Water Use Permit by Rule.

(a) No change

(b) The General Permit by rule shall be subject to the Standard conditions in section 5.1 and the applicable Specific conditions for the use type in section 5.2.1 of the Water Use Permit Applicant's Handbook, effective effective date ~~April 29, 2015~~, (<http://flrules.org/Gateway/reference.asp?No=Ref-18997> ~~<http://www.flrules.org/Gateway/reference.asp?No=Ref-05281>~~), and hereby incorporated by reference in its entirety and can be obtained from the District's website (nwfwater.com) or from District offices upon request.

(2) through (13) No change.

Rulemaking Authority 373.044, 373.113, 373.171 FS. Law Implemented 373.118, 373.216 FS. History—New 1-5-86, Amended 5-31-92, 11-2-92, 11-1-93, 10-1-95, 1-1-05, Formerly 40A-2.302, Amended 5-29-14, 4-29-15,_____.

40A-2.101 Content of Application.

(1) No change

(2) No change

(3) All Individual Water Use Permit applications whether for: a new permit; formal modification of an existing permit or renewal of an existing permit, shall be made using the Water Use Permit Application, Form No. 160, effective May 29, 2014, (<https://www.flrules.org/gateway/reference.asp?NO=Ref-03846>). Applicants shall also submit one or more of the following supplemental forms, as appropriate, for each type of water use, as defined in Rule 40A-2.501, F.A.C., being proposed in the permit application:

(a) Supplemental Form A – Agricultural Use, Form No. 160A, effective ~~effective date May 29, 2014,~~

(<http://flrules.org/Gateway/reference.asp?No=Ref-18998>

<http://www.flrules.org/Gateway/reference.asp?No=Ref-03847>).

(b) through (i) No change

(4) through (6) No change

(7) As outlined in Rule 62-41.401, F.A.C., the applicant shall provide reasonable assurance, using the best available information, that there are no adverse impacts caused by the withdrawal or diversion, on an individual or cumulative basis, to the extent that:

(a) The withdrawal or diversion does not induce movement of a contamination plume or alter the rate or direction of the movement of a contamination plume towards an Outstanding Florida Spring or its spring run such that the alteration causes harmful water quality impacts as evidenced by the predicted influence the water withdrawals would have on inducing movement of the contamination plume or as indicated by a sustained increase in background levels in contaminant concentrations.

(b) Dewatering discharges do not cause harmful water quality impacts to an Outstanding Florida Spring or its spring run. Dewatering water must be retained onsite unless the applicant demonstrates it is not technically or environmentally feasible to retain the dewatering water onsite. Applicants who have obtained and are in compliance with a National Pollutant Discharge Elimination System (NPDES) or Environmental Resource Permit (ERP) for dewatering shall be considered to not cause harmful water quality impacts from dewatering discharge to receiving waters.

(c) Withdrawals do not cause an increase in total dissolved solids (TDS) or chloride concentrations that

adversely affects an Outstanding Florida Spring or its spring run. Saline water intrusion will not be considered as harmful if it is the result of seasonal fluctuations; or climatic conditions. As part of the consideration of whether the use will cause harmful saline water intrusion or upconing, the following factors must be considered, as applicable:

1. Whether there is a sustained amount and rate of increase of TDS or chloride concentrations in an Outstanding Florida Spring;

2. Whether there would be adverse impacts to values or functions of wetlands or other surface waters associated with an Outstanding Florida Spring or its spring run.

(d) Hydrologic alterations to an Outstanding Florida Spring or its spring run resulting from withdrawals do not cause adverse impacts to the aquatic or wetland dependent flora or fauna in the spring or its spring run.

(8) To provide reasonable assurance that harm to the water resources will not occur due to the proposed water withdrawal or diversion, the following information shall be submitted as applicable:

(a) An assessment inclusive of any predicted hydrologic alterations to an Outstanding Florida Spring or its spring run caused by the withdrawal or diversion. The assessment will include any predicted changes in hydrology, or changes in aquatic or wetland flora or fauna at an Outstanding Florida Spring or its spring run. An applicant shall only be required to address its relative contribution of harm to an Outstanding Florida Spring or its spring run associated with its water withdrawal.

(b) A summary of any monitoring or modeling analysis performed and electronic copies of any modeling files.

(c) Any additional materials utilized in the analysis to provide reasonable assurance that harm, as defined above, will not occur due to the withdrawal or diversion, including aerial photographs, topographic maps, hydrologic data, environmental assessments, or other relevant information.

Rulemaking Authority 373.044, 373.113, 373.171 FS. Law Implemented 373.109, 373.223, 373.229, 373.250, 403.0877 FS. History—New 10-1-82, Amended 1-5-86, 5-31-92, 11-2-92, 11-1-93, 10-1-95, 7-1-98, 1-4-10, 10-20-13, 1-15-14, 5-29-14, 4-29-15, ____.

40A-2.223 Reservation of Water.

(1) Except as provided for by an adopted minimum flow or minimum water level, or a prevention or recovery strategy established pursuant to section 373.0421, F.S., aAt U.S. Geological Survey gauging station No. 02358000, Apalachicola River at Chattahoochee, the magnitude, duration and frequency of observed flows are reserved for the protection of fish and wildlife of the river, floodplain and Apalachicola Bay.

(2) Except as provided for by an adopted minimum flow or minimum water level, or a prevention or recovery strategy established pursuant to section 373.0421, F.S., aAt U.S. Geological Survey gauging station No. 02358700, Apalachicola River near Blountstown, the magnitude, duration and frequency of observed flows are reserved for the protection of fish and wildlife of the river, floodplain and Apalachicola Bay.

(3) Except as provided for by an adopted minimum flow or minimum water level, or a prevention or recovery strategy established pursuant to section 373.0421, F.S., aAt and below U.S. Geological Survey gauging station No. 02359170, Apalachicola River near Sumatra, the magnitude, duration and frequency of observed flows are reserved for the protection of fish and wildlife of the river, floodplain and Apalachicola Bay.

(4) Except as provided for by an adopted minimum flow or minimum water level, or a prevention or recovery strategy established pursuant to section 373.0421, F.S., aAt U.S. Geological Survey gauging station No. 02359000, Chipola River near Altha, the magnitude, duration and frequency of observed flows are reserved for the protection of fish and wildlife of the Chipola River, Apalachicola River, the associated floodplains and Apalachicola Bay.

(5) Except as provided for by an adopted minimum flow or minimum water level, or a prevention or recovery strategy established pursuant to section 373.0421, F.S., tThe Governing Board finds that consumptive withdrawals of surface water from the main stem of the Apalachicola River are not in the public interest and therefore reserves from use by permit the flows specified in subsections (1), (2) and (3). Such reservation is made for all seasons of the year.

(6) Except as provided for by an adopted minimum flow or minimum water level, or a prevention or recovery strategy established pursuant to section 373.0421, F.S., tThe Governing Board finds that consumptive withdrawals of surface water from the main stem of the Chipola River and the Chipola Cutoff are not in the public interest and, therefore, reserves from use by permit the flows specified in subsection (4). Such reservation is made for all seasons of the year.

(7) No change

(8) No change

(9) The Governing Board finds that surface water withdrawals by the City of Port St. Joe, and the Gulf County Board of County Commissioners from the Chipola River is an alternative water supply as contemplated by Sections 373.019 and 373.707, F.S., and are therefore exempt from the provisions of this Rule 40A-2.223, F.A.C. Nothing in this section shall exempt the City of Port St. Joe, and the Gulf County Board of County Commissioners from the

permitting requirements of this Chapter 40A-2, F.A.C.

Rulemaking Authority 373.044, 373.113, 373.171, 373.216, 373.219 FS. Law Implemented 373.216, 373.219, 373.223 FS. History—New 2-27-06, Amended 5-29-14,_____.

40A-2.301 Conditions for Issuance.

(1) No change

(2) In order to provide reasonable assurances that the water use is reasonable-beneficial, an applicant shall demonstrate that the use:

(a) through (d) No change

(e) Except when the use is for human food preparation or direct human consumption, will utilize the lowest quality water source that is suitable for the purpose and is technically, environmentally, and economically feasible, except for the following agricultural water uses:

1. Water used for washing hands during and after harvest activities;

2. Water that is applied in any manner that directly contacts produce during or after harvest activities (for example, water applied for washing or cooling); and

3. Water used to make ice that directly contacts produce during or after harvest activities.;

(f) No change

(g) No change

(h) Will not cause harm to an Outstanding Florida Spring or its spring run per Rule 62-41.402, F.A.C., in any of the following ways:

1. Will not cause harmful water quality impacts to an Outstanding Florida Spring or its spring run resulting from the withdrawal or diversion;

2. Will not cause harmful water quality impacts to an Outstanding Florida Spring or its spring run resulting from dewatering discharge;

3. Will not cause harmful saline water intrusion or harmful upconing to an Outstanding Florida Spring or its spring run;

4. Will not cause harmful hydrologic alterations to an Outstanding Florida Spring or its spring run; and

5. Will not otherwise cause harmful hydrologic alterations to an Outstanding Florida Spring or its spring run.;

(i)(h) No change

~~(j)(4)~~ No change

Rulemaking Authority 373.044, 373.113, 373.171 FS. Law Implemented 373.042, 373.0421, 373.185, 373.219, 373.223, 373.226, 373.227, 373.228, 373.229, 373.232, 373.236, 373.239, 373.250 FS. History—New 10-1-82, Amended 5-17-85, 1-5-86, 11-1-93, 10-1-95, 5-29-14,_____.

40A-2.321 Duration of Permits.

The Governing Board or Executive Director shall specify for each water use permit issued (new, modification, or renewal) a specific period of time the permit will be valid. The District shall notify the permit applicant, pursuant to the provisions of Rule 40A-1.203, F.A.C., of the recommended duration for the requested permit. The Governing Board or Executive Director is authorized to approve permit durations up to the statutory limits specified in Section 373.236, F.S., provided that the applicant demonstrates reasonable assurance that the proposed use meets the conditions for issuance in Rule 40A-2.301, F.A.C., for the requested duration. Otherwise, the Governing Board or Executive Director is authorized to issue permits for a shorter duration that reflects the period for which such reasonable assurances can be provided. Special duration factors listed in section 1.5.1 of the Water Use Permit Applicant's Handbook shall be considered in determining permit durations.

(1) No change

(2) An applicant is eligible for a permit duration of up to thirty years if the applicant proposes a new water supply development or water resource development project using reclaimed water that meets the advanced waste treatment standards for total nitrogen and total phosphorous as defined in paragraph 403.086(4)(a), F.S. (2025), as part of an application for consumptive use, provided the following conditions are met:

(a) The applicant submits sufficient data to provide reasonable assurance that the conditions for permit issuance will be met for the duration of the permit; and

(b) The applicant demonstrates how quantifiable savings of the source utilized by the applicant associated with the new water supply development or water resource development project either meets water demands beyond a 20-year permit duration or is completed for the purpose of meeting the requirements of a prevention or recovery strategy established pursuant to section 373.0421, F.S. (2025); and

(c) The applicant demonstrates a reasonable-beneficial water demand for the permit's allocation through the permit duration; and

(d) The specific permit duration shall be calculated based on the following factors: the quantity of potable water

offsets that will produce significant water savings, quantity of groundwater made available by the development of impact offsets, the duration for which the impact offset as defined in subparagraph 373.250(5)(a)1., F.S. (2025), addresses potential impacts to a minimum flow or minimum water level in prevention or recovery, the project implementation timeframe, and the demonstration of water demand, as calculated at the time of the application; and

(e) The new water supply or water resource development project will be completed and operational within the first 20-years of the issued permit duration; and

(f) The applicant provides documentation of the quantification of the amount of potable resources saved through the use of reclaimed water for new water supply development projects, or the offset provided to the source of water utilized by the applicant for new water resource development projects; and

(g) The use of the reclaimed water must be in the ownership or control of the entity receiving the extended duration; and

(h) A project shall be considered new when completed and operational during the term of the permit and after the effective date of this rule.

(3)(2) The Governing Board is authorized to grant a permit of lesser duration than those specified above, in order to address special duration factors as described in section 1.5-4 of the Water Use Permit Applicant's Handbook or to provide for the protection of the resource or existing legal uses (e.g., insufficient data for long-term authorization) or for other considerations as provided by Section 373.236, F.S.

(4)(3) No change

Rulemaking Authority 373.044, 373.113, 373.171 FS. Law Implemented 373.185, 373.219, 373.236 FS.

History—New 10-1-82, Amended 5-17-83, 1-5-86, 11-2-92, 7-1-98, 5-29-14,_____.

40A-2.331 Modification of Permits.

(1) No change

(2) No change

(3) Modifications shall be requested by either:

(a) No change

(b) Letter request, on the Water Use Permit Letter Modification Request Form, Form No. 161, effective effective date ~~May 29, 2014~~, (<http://flrules.org/Gateway/reference.asp?No=Ref-18999>
<http://www.flrules.org/Gateway/reference.asp?No=Ref-03863>), which is hereby incorporated by reference into this

section and available from the District's website (nwfwater.com) or from District offices, including a description of the proposed modification and the appropriate fees. Letter requests can be utilized provided that:

1. through 8. No change

9. The proposed modification will not extend a permit duration, except as provided for in Rule 40A-2.321, F.A.C., ~~as incentive for water conservation; and,~~

10. Well replacements must be constructed within the same aquifer unit, be located within 300 feet of the original well, be located at least 300 feet from wetlands, lakes, and springs, and have a pumping capacity less than or equal to the original well; ~~and-~~

11. The proposed modification will not increase permitted water use allocations within an Area of Resource Concern or Water Resource Caution Area.

(c) through (f) No change

(4) A permittee may apply to extend the permit's duration through a letter modification request for up to ten years if the permittee proposes a new water supply development or new water resource development project using reclaimed water that meets the advanced waste treatment standards for total nitrogen and total phosphorous as defined in paragraph 403.086(4)(a), F.S. (2025), during the term of its permit which results in the reduction of groundwater or surface water withdrawals or is completed to benefit a waterbody with a minimum flow or minimum water level with an adopted recovery or prevention strategy provided the following conditions are met:

(a) The permittee is in compliance with the permittee's consumptive use permit; and

(b) The permittee demonstrates how the quantifiable savings of the source utilized by the permittee associated with the new water supply development or water resource development project either meets water demands beyond the issued permit duration or is completed for the purpose of meeting the requirements of a prevention or recovery strategy established pursuant to Section 373.0421, F.S. (2025); and

(c) The permittee demonstrates a reasonable-beneficial water demand for the permit's allocation through the term of the extension; and

(d) The permittee submits a compliance report that contains sufficient data to maintain reasonable assurance that the initial conditions for permit issuance are met at the time of application for the modification. A District-approved compliance report as required under subsection 373.236(4), F.S. (2025), submitted to the District within one year prior to the extension request shall satisfy this requirement; and

(e) For water supply development projects, the permit extension shall provide only for the modification of the duration of the permit and shall not be used to change the source of the allocation or increase the quantity; and

(f) For water resource development projects, the permit extension shall provide for the modification of the duration of the permit and shall not be used to change the source of the allocation, but may be used to increase the quantity to no more than the new water resource development project offset. Nothing in this paragraph shall be construed to authorize the use of groundwater where otherwise restricted by rule or law; and

(g) Multiple permit extensions may be requested to reflect quantifiable potable water offsets that will produce significant water savings over the term of the permit. However, in no case shall the cumulative duration of all extensions exceed ten years from the original permit expiration date; and

(h) The specific duration of the extension, with a minimum of one year, shall be calculated based on the following factors: quantity of potable water offsets that will produce significant water savings, quantity of groundwater made available by the development of impact offsets, the duration for which the impact offset as defined in subparagraph 373.250(5)(a)1., F.S. (2025), addresses potential impacts to a minimum flow or minimum water level in prevention or recovery, the project implementation timeframe, and the demonstration of water demand, as calculated at the time of the extension request; and

(i) The new water supply or water resource development project has been completed and is operational prior to the extension being granted or will be completed and operational during the term of the original permit; and

(j) The permittee provides documentation of the quantification of the amount of potable resources that will be saved through the use of reclaimed water for new water supply development projects, or the offset that will be provided to the source of water utilized by the permittee for new water resource development projects; and

(k) The use of the reclaimed water must be in the ownership or control of the entity receiving the extended duration; and

(l) A project shall be considered new when implemented during the term of the original permit and after the effective date of this rule.

Rulemaking Authority 373.044, 373.113, 373.171 FS. Law Implemented 373.171, 373.223, 373.239 FS.

History—New 10-1-82, Amended 1-5-86, 10-1-95, 7-1-98, 5-29-14, 4-29-15, _____.