



FLORIDA DEPARTMENT OF Environmental Protection

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FROM: Adam Blalock, Esq. *AFB*
Deputy Secretary, Ecosystem Restoration

SUBJECT: Guidance Memo re: Interim Consumptive Use Permitting (CUP) within the
Central Florida Water Initiative Area

DATE: June 5, 2020

In December 2013, the Florida Department of Environmental Protection (DEP or Department) provided guidance to the water management districts regarding the implementation of their consumptive use permitting programs while the Central Florida Water Initiative Regional Water Supply Plan (CFWI RWSP) was in development. Since that time, the CFWI has made significant progress in our collaborative effort to plan for the future water supply needs of Central Florida while sustaining our natural resources. In November 2015, the Districts' Governing Boards approved the first CFWI RWSP, which included estimates and projections to 2035. The 2015 CFWI RWSP has been updated based on a planning horizon of 2040, and it is expected that the draft 2020 CFWI RWSP will be considered by the Districts' Governing Boards in late 2020. The 2020 RWSP has identified a groundwater supply shortfall based on the 2040 groundwater demand projections.

In 2016, legislation was passed and codified in Section 373.0465, F.S., that addresses water supply planning in the CFWI. The statute directs continuation of the collaborative process among the state and regional agencies, regional public water supply utilities, and other stakeholders. In addition, Section 373.0465(2)(d), F.S., requires DEP to adopt uniform rules for consumptive use and water use permitting (CUP/WUP), Minimum Flows and Minimum Water Levels (MFLs) and water reservations. The Department has held numerous rulemaking workshops, in coordination with the water management districts, the Florida Department of Agriculture and Consumer Services, and other stakeholders, to develop uniform rules for application within the CFWI Planning Area. That rulemaking effort is currently ongoing. In the interim, the water management districts must continue to perform their statutory responsibility to review and process consumptive use permit applications under applicable statutory and rule provisions. The purpose of this memo is to provide guidance to the districts in implementing the CUP program during this interim time period. This guidance is effective immediately.

Coordination on Pending Applications

There is a continuing need for coordination and the three water management districts are directed to closely coordinate agency action on consumptive use permit applications within the CFWI Planning Area and provide transparency in the application process for water users and other stakeholders in the region. In order to achieve this comprehensive review of proposed water withdrawals within the CFWI Planning Area, the water management districts should continue to exchange information on all permit applications that could have harmful impacts to water resources or cause impacts to existing legal users within the CFWI. Information exchanged in furtherance of this effort should be provided to the applicant and considered in any subsequent requests for information or in the staff report or permit issued by the reviewing water management district.

Permit Duration

As part of the CFWI, substantial technical work has been generated concerning groundwater availability in the Central Florida region. This information represents the best available technical information concerning current and projected water resource conditions, which shows that adverse impacts to wetlands and other water resources are currently occurring in several areas in the CFWI. Some impacts are the result of multiple factors, including groundwater withdrawals.

The districts are expected to utilize this information during review of applications for consumptive use permits and pay particular attention to the reasonable assurances provided that the conditions for permit issuance will be met for the duration of the permit in accordance with Section 373.236, F.S. While Section 373.236, F.S., indicates permits shall be granted for 20 years, this statute also indicates the potential for shorter permit durations that reflect the period for which reasonable assurances can be provided. Given the circumstances existing in the CFWI, a case by case analysis of whether or not a shorter permit duration should be issued is warranted, and this decision should be carefully analyzed by the district.

Water Conservation

While significant achievements have been made in water conservation and the use of reclaimed water in the CFWI area, continued improvement is required, particularly given that use is approaching, or in some areas, has exceeded, the sustainable yield of the upper Floridan aquifer. The districts should continue to require applicants to demonstrate, through careful compliance with existing district rules for water use efficiency and conservation plans, that the proposed use is reasonable-beneficial.

In October 2019, the CFWI Steering Committee approved the Conservation Implementation Strategy. The goal of the Strategy is to (1) identify quantifiable conservation savings between 2010 to date; (2) analyze the trend of quantifiable conservation savings through the planning horizon of 2035; and (3) identify and quantify conservation best management practices (BMPs) and programs that can be used to meet the Steering Committee's goal of exceeding the 2035 conservation projection. The Strategy presents the information by water use category and is available at: www.cfwewater.com/waterconservation.html. The districts should continue efforts as outlined in the strategy, and its successors.

To further promote public education and awareness related to the need for water conservation, the Districts shall include the water conservation Limiting Condition provided in the section below on permits issued in the CFWI area.

Permit Application Documentation and Permit Conditions

It is important for applicants who receive permits during this interim period to be put on notice that they are located within the CFWI area and that the solutions and strategies that are developed may affect permitted water users in the future. Therefore, the districts should include the following language in the staff documentation (technical staff report or abstract) prepared for each application, and include the following Limiting Conditions on permits issued:

Staff Report or Abstract Language:

This application satisfies existing conditions for permit issuance because *(insert reasoning regarding water resources, existing legal users, demand, etc.)*

The recommended permit duration is commensurate with the applicant's ability to satisfy conditions of permit issuance. *(Insert explanation as needed.)*

The proposed water use is located within the area of the Central Florida Water Initiative (CFWI). The CFWI is a collaborative regional water supply endeavor to protect, conserve, and restore water resources in the area by working to accomplish the goals presented in the Central Florida Water Initiative Guidance Document. These goals include crafting long-term water supply solutions for the Central Florida region. The CFWI effort may also result in specific regulatory requirements. While the scope and content of these regulatory requirements are unknown at this time, it is possible they may include requirements that are related to the permittee's relative contribution to the water resource impact being addressed, the timing of permit issuance compared to other existing legal users, and/or include other considerations.. Therefore, this permit includes Limiting Condition ## that provides specific notification that the permit may be modified during the term of the permit to address unanticipated harm or impacts to existing legal users that is occurring or is projected to occur from the permittee's authorized withdrawal over the permit duration.

Since this application is located within the CFWI area, it is necessary for the applicant to consider implementing the heightened water conservation requirements defined in Limiting Condition ##.

The applicant is advised to carefully consider its infrastructure investments in light of the ongoing Central Florida Water Initiative.

Permit Limiting Conditions:

##. Notice included in new permits; modifications with increases in allocation or duration, except permit duration extensions associated with conservation achieved pursuant to the Applicant's Handbook for Water Use Permit Applications criterion

[2.3.2. F.1.c. and Rule 40E-2.331(4)(a)2.b. (SFWMD), 1.4.3.3.l(c) (SJRWMD)}, and 2.4.8.7 (SFWMD), when effective) and *I* or renewals beginning (*Insert Date of Guidance Memo*):

This project is located in the Central Florida Water Initiative (CFWI) area, an area with ongoing impacts to water resources which are being addressed by the CFWI. If the District determines that adverse impacts to water resources or existing legal users are occurring or are projected to occur because of the Permittee's authorized withdrawals over the permit duration, the District, upon reasonable notice to the permittee and including a statement of facts upon which the District based its determination, may modify quantities permitted or other conditions of the permit, as appropriate, to address the impact, but only after an opportunity for the permittee to resolve or mitigate the impact or to request a hearing. Such modification, if any, will consider such factors as the permittee's relative contribution to the water resource impact being addressed due to groundwater withdrawals, the timing of this permit issuance compared to presently existing legal use of water, and other considerations identified. Modifications may include mitigation of impacts and *I* or reconsideration of allocations or requirements to timely implement required actions that are consistent with the long-term, regional water supply solutions as implemented by rules. Such actions may include the development of alternative water supplies, the implementation of water resource and *I* or water supply development projects, the application of impact offsets or substitution credits, operating plans, heightened water conservation or other appropriate actions. Nothing in this condition is intended to abrogate the rights of the Governing Board or of any other person under Section 373.233, Florida Statutes.

##. The Central Florida Water Initiative documented existing water resource environmental impacts within its boundaries. This Initiative remains underway and is, in part, crafting long-term regulatory water supply solutions for the region. As a component of immediate, interim measures the permittee is encouraged to participate in the District's on-going, heightened water conservation public education program. Given the permittee's use class, opportunities may include such activities as participation in water conservation public service announcements, demonstrations of irrigation efficiency at community gardens, posting water conservation information or links on the permittee's website. Please contact (INSERT contact information) to discuss opportunities for participation in this important District effort.

If you have any questions regarding this guidance memo, please contact Edward C. Smith, Director of the Office of Water Policy and Ecosystems Restoration, at Edward.C.Smith@floridaDEP.gov or (850) 245-3169.