

Suggested changes to the FDEP Interim Guidance Memorandum within the CFWI Area after adoption of the RWSP

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Purpose and Summary

On December 12, 2013, FDEP issued “Guidance Memo re: Interim Consumptive Use Permitting (CUP) within the Central Florida Water Initiative (CFWI) Area” (Guidance Memo). The Guidance Memo presented guidance for groundwater withdrawal CUPs to be implemented within the CFWI Area during the interim period from its issuance until the CFWI Regional Water Supply Plan (RWSP) was prepared. The Guidance Memo did not affect the typical CUP application requirements for the demonstrations of need, use in the public interest, and the lack of unacceptable impacts to the water resource and existing legal users, regardless of water supply source.

Now that CFWI is moving to a different phase, it is important to determine what should be the status of the Guidance Memo, since the interim period has passed and the Reg Team is reviewing proposals for rule amendments. At minimum, the Guidance Memo should be revised and updated. This memorandum reviews the status of the four topics listed in the Guidance Memo and makes specific recommendations as to revisions to the Guidance Memo. Some of these revisions may be best carried forward through rule amendment; others may be appropriate for a new Guidance Memo.

Introduction

The Guidance Memo is specific to groundwater withdrawals, the effects of the groundwater withdrawals, and maintaining the sustainable limit of groundwater withdrawals by coordination as to permit applications among the WMDs, consideration of permit duration during permit application review, promotion of water conservation, and provision of uniform text for staff reports and select limiting conditions for groundwater withdrawal CUPs.

Since the issuance of the Guidance Memo, draft and final versions of the RWSP have been prepared and reviewed by the CFWI technical teams, CFWI Technical Oversight Committee, CFWI Management Oversight Committee, the WMDs, and the public. The final RWSP and its companion document, *2035 Water Resources Protection and Water Supply Strategies Plan*, December 2015, were presented to and approved by the CFWI Steering Committee and the Governing Boards of the three water management districts (WMDs) between October 2015 and December 2015.

Presented below is an assessment of the applicability of the four topics that were the subjects of the Guidance Memo to groundwater withdrawal CUPs within the CFWI Area, to be considered in updating the Guidance Memo.

Topic 1 – Coordination on Pending Permit Applications

The coordination of pending CUP applications among the three WMDs applies to all applications and anticipated applications for permit renewals. In the larger context this continued coordination assists

permitting consistency among the WMDs and provides a formal mechanism to keep the public informed. This coordinating effort should be continued.

RECOMMENDATION: The Coordination of Pending Permit Applications by the three WMDs should include maintaining a cumulative total of pending and approved permitted withdrawals and the net increase in pending and approved permitted withdrawals beginning January 2014, covered by the Guidance Memo.

Topic 2 – Permit Duration

This topic described maximum CUP durations established by Florida Statutes and the ability to issue shorter duration permits based on a case-by-case analysis during permit application review. This guidance is nearly identical to the practice prior to issuance of the Guidance Memo.

RECOMMENDATION: Permit durations should be 20 years or less as determined on a case-by-case basis.

Topic 3 – Water Conservation

This topic described the importance of water conservation and directed the three WMDs to develop additional water conservation options, to work with a selected number of large utility customers to assess water use practices and opportunities for more efficient water use, and to annually perform random citizen surveys to determine awareness of water supply issues and the need for water conservation and report the progress of these activities to FDEP by June 2014. Continued emphasis on water conservation benefits the environment, and residents and visitors of the CFWI Area. Continued conservation efforts also assist in prolonging permitted traditional water supplies. A proposed permit condition was suggested as follows:

“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 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.”

RECOMMENDATION: This condition should continue to be added to all CUPs covered by the Guidance Memo.

Topic 4 – Permit Application Documentation and Permit Conditions

In addition to the condition listed above, this topic presented guidance on other language to be included in the staff reports and permit limiting conditions during the interim period. This language presented in the Guidance Memo was to apply to new permits and permit modifications with increases in allocation or duration, except permit duration extensions associated with conservation. However, WMDs have applied this condition to permits that do not meet these criteria such as permit renewals for water sources other than groundwater and permit modifications which did not increase allocation or duration.

The context of the guidance language is that if permitted groundwater withdrawals unacceptably impact the hydrology or ecology of surface water bodies or spring flows, the permit may be modified. The language (Topic 4 Condition) reads as follows:

“This project is located in the Central Florida Water Initiative (CFWI) area, an area with on-going 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 by the CFWI Solutions Planning and Regulatory Teams. Modifications may include mitigation of impacts and / 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 / or water supply development projects, the application of impact offsets or substitution credits, operating plans, heightened water conservation or other appropriate actions."

Given the potential adverse impact of the imposition of such text in a permit for a project that should be incentivized because it furthers the goals of CFWI, including the creation of unwarranted adverse bonding considerations for public utilities, it is important to evaluate the types of permits to which the Topic 4 Condition should be appropriately added.

The WMDs have been implementing the Guidance Memo by adding the Topic 4 Condition to all CUPs without discriminating as to the type (water source and use class) of CUP involved. It is appropriate also as part of this exercise to review this practice and determine which existing permits should be modified by Administrative Order to remove the Topic 4 Condition.

The Topic 4 Condition is relevant for groundwater withdrawal CUPs for all use classes. By definition, the Topic 4 Condition is not relevant for CUPs for traditional surface water and alternative water supplies (AWS) for all use classes because impacts caused by these withdrawals are not associated with impacts from withdrawals of groundwater.

Environmental protection of the hydrology and ecology of surface water bodies and spring flows from surface water withdrawals and AWS withdrawals remains in effect through the existing permitting criteria and impact analyses performed through CUP application and review processes that are unaffected by the Guidance Memo.

Existing CUPs that implement AWS¹ to which the Topic 4 Condition has been imposed should be the subject of administrative orders to delete the condition.

RECOMMENDATION: The Guidance Memo should be amended to instruct the WMDs to apply the Topic 4 Condition only to new groundwater withdrawal CUPs and groundwater withdrawal permit modifications with increases in allocation or duration, except permit duration extensions associated with conservation. This should apply for all use classes. The Guidance Memo should be amended to clarify that the WMDs should not apply the Topic 4 Condition to: traditional surface water and AWS withdrawal CUPs for all use classes; and, to other groundwater withdrawal permit modifications that do not result in increases in allocation or duration. The Guidance Memo should also instruct the WMDs, by administrative order, to rescind the condition from previously-issued permits that do not meet this description.

¹ Alternative water supplies defined in the CFWI RWSP and in Section 373.019(1), F.A.C. - "Alternative water supplies" means salt water; brackish surface and groundwater; surface water captured predominately during wet-weather flows; sources made available through the addition of new storage capacity for surface or groundwater, water that has been reclaimed after one or more public supply, municipal, industrial, commercial, or agricultural uses; the downstream augmentation of water bodies with reclaimed water; stormwater; and any other water supply source that is designated as nontraditional for a water supply planning region in the applicable regional water supply plan.