

## Overview of Transfers of Water across District Boundaries

- **Types of Transfers**
  - Interdistrict transfers of groundwater
  - Same county transfer of groundwater across district boundaries
  - Transfer of surface water across district boundaries
  - Local sources first (transfers across county boundaries)
  
- **Interdistrict transfer and use of groundwater**
  - §373.2295, F.S., defines term, process, and test
  - Generally, a withdrawal of groundwater and transfer of that groundwater across WMD **and** county boundaries for use
    - Public Interest Test defined and source of CUP application information identified (Subsection 373.2295(4), F.S.)
      - “...if the needs of the area where the use will occur and the specific area from which the groundwater will be withdrawn can be satisfied, the permit ... shall be issued.”
      - “...the projected populations, as contained in the future land use elements of the comprehensive plans... [for both withdrawal and use areas] ... together with other evidence presented on future needs of those areas.”
  - Procedural requirements:
    - File application with district where water will be withdrawn and provide a copy to district where water will be used
    - Comments by district where water will be used must be attached to notice of agency action
    - If requested, Department reviews intended agency action and issues final order
  - Additional provisions regarding procedures for associated local government approvals
  
- **Same county transfer of groundwater across district boundaries**
  - Same public interest test and application information, but standard application procedures
  - Same additional provisions re: associated local government approvals
  
- **Transfer of surface water across district boundaries**
  - Rule 62-40.422, F.A.C., lists factors to consider when deciding if the transfer is consistent with the public interest
  
- **Additional statutory provisions:** §§373.016(4) and 373.223(2) and (3), F.S.

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### **373.2295 Interdistrict transfers of groundwater.—**

(1) As used in this section, the term “interdistrict transfer and use” means a consumptive water use that involves the withdrawal of groundwater from a point within one water management district for use outside the boundaries of that district, but does not include a withdrawal and use within the same county. In case of withdrawal of groundwater from a point within one water management district for use outside the boundaries of that district but within the same county, the provisions of subsections (4), (11), and (13) shall apply, and the district considering a permit application for such a consumptive use shall apply the applicable provisions of this chapter, and its rules, to the withdrawal and use.

(2) To obtain a permit for an interdistrict transfer and use of groundwater, an applicant must file an application in accordance with s. [373.229](#) with the water management district having jurisdiction over the area from which the applicant proposes to withdraw groundwater and submit a copy of the application to the water management district having jurisdiction over the area where the water is to be used.

(3) The governing board of the water management district where the groundwater is proposed to be withdrawn shall review the application in accordance with this part, the rules of the district which relate to consumptive water use permitting, and other applicable provisions of this chapter.

(4) In determining if an application is consistent with the public interest as required by s. [373.223](#), the projected populations, as contained in the future land use elements of the comprehensive plans adopted pursuant to chapter 163 by the local governments within which the withdrawal areas and the proposed use areas are located, will be considered together with other evidence presented on future needs of those areas. If the proposed interdistrict transfer of groundwater meets the requirements of this chapter, and if the needs of the area where the use will occur and the specific area from which the groundwater will be withdrawn can be satisfied, the permit for the interdistrict transfer and use shall be issued.

(5) In addition to other requirements contained in this part, the water management district where the groundwater is proposed to be withdrawn shall:

(a) Furnish copies of any application, information, correspondence, or other related material to the water management district having jurisdiction over the area where the water is to be used; and

(b) Request comments on the application and the future water needs of the proposed use area from the water management district having jurisdiction over the area where the water is to be used. If comments are received, they must be attached to the preliminary notice of intended agency action and may not create a point of entry for review whether issued by the governing board or district staff.

(6) Upon completion of review of the application, the water management district where the groundwater is proposed to be withdrawn shall prepare a notice of preliminary intended agency action which shall include an evaluation of the application and a recommendation of approval, denial, or approval with conditions. The notice shall be furnished to the district where the water is to be used, the applicant, the Department of Environmental Protection, the local governments having jurisdiction over the area from which the groundwater is to be withdrawn and where the water is to be used, and any person requesting a copy of the notice.

(a) Any interested person may, within the time specified in the notice, notify in writing the district from where the groundwater is to be withdrawn of such person's position and comments or objections, if any, to the preliminary intended action.

(b) The filing of the notice of intended agency action shall toll the time periods contained in s. [120.60](#) for the granting or denial of a permit for an interdistrict transfer and use of groundwater.

(c) The preliminary intended agency action and any comments or objections of interested persons made pursuant to paragraph (a) shall be considered by the governing board of the water management district where the groundwater is proposed to be withdrawn. Following such consideration, the governing board shall issue a notice of intended agency action.

(d) Any substantially affected person who submitted a notification pursuant to paragraph (a) may request review by the department within 14 days after the filing of the notice of intended agency action. If no request for review is filed, the notice of intended agency action shall become the final order of the governing board.

(7) Notwithstanding the provisions of chapter 120, the department shall, within 30 days after its receipt of a request for review of the water management district's action, approve, deny, or modify the water management district's action on the proposed interdistrict transfer and use of groundwater. The department shall issue a notice of its intended action. Any substantially affected person who requested review pursuant to paragraph (6)(a) may request an administrative hearing pursuant to chapter 120 within 14 days after notice of the department's intended action. The parties to such proceeding shall include, at a minimum, the affected water management districts and the applicant. The proceedings initiated by a petition under ss. [120.569](#) and [120.57](#), following the department's issuance of a notice of intended agency action, is the exclusive proceeding authorized for the review of agency action on the interdistrict transfer and use of groundwater. This procedure is to give effect to the legislative intent that this section provide a single, efficient, simplified, coordinated permitting process for the interdistrict transfer and use of groundwater.

(8) The department shall issue a final order which is subject to review pursuant to s. [120.68](#) or s. [373.114](#).

(9) In administering this part, the department or the water management districts may enter into interagency agreements. However, such agreements are not subject to the provisions of s. [373.046](#) and chapter 120.

(10) The state hereby preempts any regulation of the interdistrict transfer and use of groundwater. If any provision of this section is in conflict with any other provision or restriction under any law, administrative rule, or ordinance, this section shall govern and such law, rule, or ordinance shall be deemed superseded for the purposes of this section. A water management district or the department may not adopt special rules which prohibit or restrict interdistrict transfer and use of groundwater in a manner inconsistent with this section.

(11) If, after the final order of the department or final agency action under this section, the proposed use of the site designated in the application for groundwater production, treatment, or

transmission facilities does not conform with the existing zoning ordinances, a rezoning application may be submitted. If local authorities deny the application for rezoning, the applicant may appeal this decision to the Land and Water Adjudicatory Commission, which shall authorize a variance or nonconforming use to the existing comprehensive plan and zoning ordinances, unless the commission determines after notice and hearing that such variance or nonconforming use is contrary to the public interest.

(12) The permit required under this section and other sections of this chapter and chapter 403 are the sole permits required for interdistrict transfer and use of groundwater, and such permits are in lieu of any license, permit, or similar document required by any state agency or political subdivision pursuant to chapter 163, chapter 380, or chapter 381, and the Florida Transportation Code.

(13) When a consumptive use permit under this section is granted for water use beyond the boundaries of a local government from which or through which the groundwater is withdrawn or transferred and a local government denies a permit required under chapter 125 or chapter 153 for a facility or any infrastructure which produces, treats, transmits, or distributes such groundwater, the person or unit of government applying for the permit under chapter 125 or chapter 153 may appeal the denial to the Land and Water Adjudicatory Commission. The commission shall review the local government action for consistency with this chapter and the interdistrict groundwater transfer permit and may reverse, modify, or approve the local government's action.

**History.**—s. 1, ch. 87-347; s. 266, ch. 94-356; s. 99, ch. 96-410; s. 11, ch. 2000-212; s. 1, ch. 2003-64; s. 2, ch. 2003-265.

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### **373.223** Conditions for a permit.—

(1) To obtain a permit pursuant to the provisions of this chapter, the applicant must establish that the proposed use of water:

- (a) Is a reasonable-beneficial use as defined in s. [373.019](#);
- (b) Will not interfere with any presently existing legal use of water; and
- (c) Is consistent with the public interest.

(2) The governing board or the department may authorize the holder of a use permit to transport and use ground or surface water beyond overlying land, across county boundaries, or outside the watershed from which it is taken if the governing board or department determines that such transport and use is consistent with the public interest, and no local government shall adopt or enforce any law, ordinance, rule, regulation, or order to the contrary.

(3) Except for the transport and use of water supplied by the Central and Southern Florida Flood Control Project, and anywhere in the state when the transport and use of water is supplied exclusively for bottled water as defined in s. [500.03\(1\)\(d\)](#), any water use permit applications pending as of April 1, 1998, with the Northwest Florida Water Management District and self-suppliers of water for which the proposed water source and area of use or application are located on contiguous private properties, when evaluating whether a potential transport and use of ground or surface water across county boundaries is consistent with the public interest, pursuant to paragraph (1)(c), the governing board or department shall consider:

- (a) The proximity of the proposed water source to the area of use or application.
- (b) All impoundments, streams, groundwater sources, or watercourses that are geographically closer to the area of use or application than the proposed source, and that are technically and economically feasible for the proposed transport and use.
- (c) All economically and technically feasible alternatives to the proposed source, including, but not limited to, desalination, conservation, reuse of nonpotable reclaimed water and stormwater, and aquifer storage and recovery.
- (d) The potential environmental impacts that may result from the transport and use of water from the proposed source, and the potential environmental impacts that may result from use of the other water sources identified in paragraphs (b) and (c).
- (e) Whether existing and reasonably anticipated sources of water and conservation efforts are adequate to supply water for existing legal uses and reasonably anticipated future needs of the water supply planning region in which the proposed water source is located.

(f) Consultations with local governments affected by the proposed transport and use.

(g) The value of the existing capital investment in water-related infrastructure made by the applicant.

Where districtwide water supply assessments and regional water supply plans have been prepared pursuant to ss. [373.036](#) and [373.709](#), the governing board or the department shall use the applicable plans and assessments as the basis for its consideration of the applicable factors in this subsection.

(4) The governing board or the department, by regulation, may reserve from use by permit applicants, water in such locations and quantities, and for such seasons of the year, as in its judgment may be required for the protection of fish and wildlife or the public health and safety. Such reservations shall be subject to periodic review and revision in the light of changed conditions. However, all presently existing legal uses of water shall be protected so long as such use is not contrary to the public interest.

(5) In evaluating an application for consumptive use of water which proposes the use of an alternative water supply project as described in the regional water supply plan and provides reasonable assurances of the applicant's capability to design, construct, operate, and maintain the project, the governing board or department shall presume that the alternative water supply use is consistent with the public interest under paragraph (1)(c). However, where the governing board identifies the need for a multijurisdictional water supply entity or regional water supply authority to develop the alternative water supply project pursuant to s. [373.709\(2\)\(a\)2.](#), the presumption shall be accorded only to that use proposed by such entity or authority. This subsection does not effect evaluation of the use pursuant to the provisions of paragraphs (1)(a) and (b), subsections (2) and (3), and ss. [373.2295](#) and [373.233](#).

History.—s. 3, part II, ch. 72-299; s. 10, ch. 73-190; s. 10, ch. 76-243; s. 35, ch. 85-81; s. 4, ch. 98-88; s. 6, ch. 2005-291; s. 15, ch. 2010-205.

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### 373.016 Declaration of policy.—

- (1) The waters in the state are among its basic resources. Such waters have not heretofore been conserved or fully controlled so as to realize their full beneficial use.
- (2) The department and the governing board shall take into account cumulative impacts on water resources and manage those resources in a manner to ensure their sustainability.
- (3) It is further declared to be the policy of the Legislature:
  - (a) To provide for the management of water and related land resources;
  - (b) To promote the conservation, replenishment, recapture, enhancement, development, and proper utilization of surface and groundwater;
  - (c) To develop and regulate dams, impoundments, reservoirs, and other works and to provide water storage for beneficial purposes;
  - (d) To promote the availability of sufficient water for all existing and future reasonable-beneficial uses and natural systems;
  - (e) To prevent damage from floods, soil erosion, and excessive drainage;
  - (f) To minimize degradation of water resources caused by the discharge of stormwater;
  - (g) To preserve natural resources, fish, and wildlife;
  - (h) To promote the public policy set forth in s. [403.021](#);
  - (i) To promote recreational development, protect public lands, and assist in maintaining the navigability of rivers and harbors; and
  - (j) Otherwise to promote the health, safety, and general welfare of the people of this state.

In implementing this chapter, the department and the governing board shall construe and apply the policies in this subsection as a whole, and no specific policy is to be construed or applied in isolation from the other policies in this subsection.

(4)(a) Because water constitutes a public resource benefiting the entire state, it is the policy of the Legislature that the waters in the state be managed on a state and regional basis. Consistent with this directive, the Legislature recognizes the need to allocate water throughout the state so as to meet all reasonable-beneficial uses. However, the Legislature acknowledges that such allocations have in the past adversely affected the water resources of certain areas in this state. To protect such water resources and to meet the current and future needs of those areas with abundant water, the Legislature directs the department and the water management districts to encourage the use of water from sources nearest the area of use or application whenever practicable. Such sources shall include all naturally occurring water sources and all alternative water sources, including, but not limited to, desalination,

conservation, reuse of nonpotable reclaimed water and stormwater, and aquifer storage and recovery. Reuse of potable reclaimed water and stormwater shall not be subject to the evaluation described in s. [373.223\(3\)\(a\)-\(g\)](#). However, this directive to encourage the use of water, whenever practicable, from sources nearest the area of use or application shall not apply to the transport and direct and indirect use of water within the area encompassed by the Central and Southern Florida Flood Control Project, nor shall it apply anywhere in the state to the transport and use of water supplied exclusively for bottled water as defined in s. [500.03\(1\)\(d\)](#), nor shall it apply to the transport and use of reclaimed water for electrical power production by an electric utility as defined in section [366.02\(2\)](#).

(b) In establishing the policy outlined in paragraph (a), the Legislature realizes that under certain circumstances the need to transport water from distant sources may be necessary for environmental, technical, or economic reasons.

(5) The Legislature recognizes that the water resource problems of the state vary from region to region, both in magnitude and complexity. It is therefore the intent of the Legislature to vest in the Department of Environmental Protection or its successor agency the power and responsibility to accomplish the conservation, protection, management, and control of the waters of the state and with sufficient flexibility and discretion to accomplish these ends through delegation of appropriate powers to the various water management districts. The department may exercise any power herein authorized to be exercised by a water management district; however, to the greatest extent practicable, such power should be delegated to the governing board of a water management district.

(6) It is further declared the policy of the Legislature that each water management district, to the extent consistent with effective management practices, shall approximate its fiscal and budget policies and procedures to those of the state.

**History.**—s. 2, part I, ch. 72-299; s. 36, ch. 79-65; s. 70, ch. 83-310; s. 5, ch. 89-279; s. 20, ch. 93-213; s. 250, ch. 94-356; s. 1, ch. 97-160; s. 1, ch. 98-88.

**62-40.422 Interdistrict Transfer.**

The following shall apply to the transfers of surface and ground water where such transfers are regulated pursuant to Part II of Chapter 373, F.S.:

(1) The transfer or use of surface water across District boundaries shall require approval of each involved District. The transfer or use of ground water across District boundaries shall require approval of the District where the withdrawal of ground water occurs.

(2) In deciding whether the transfer and use of surface water across District boundaries is consistent with the public interest pursuant to Section 373.223, F.S., the Districts shall consider the extent to which:

(a) Comprehensive water conservation and reuse programs are implemented and enforced in the area of need;

(b) The major costs, benefits, and environmental impacts have been adequately determined including the impact on both the supplying and receiving areas;

(c) The transfer is an environmentally and economically acceptable method to supply water for the given purpose;

(d) The present and projected water needs of the supplying area are reasonably determined and can be satisfied even if the transfer takes place;

(e) The transfer plan incorporates a regional approach to water supply and distribution including, where appropriate, plans for eventual interconnection of water supply sources; and

(f) The transfer is otherwise consistent with the public interest based upon evidence presented.

(3) The interdistrict transfer and use of ground water must meet the requirements of Section 373.2295, F.S.

*Specific Authority 373.026(7), 373.036(1)(d), 373.043, 373.171 FS. Law Implemented 373.023, 373.026, 373.036(1)(d), 373.103, 373.171, 373.1961, 373.223, 373.2295, 373.246, 373.250, 373.418, 403.064, 403.0891 FS. History—New 5-5-81, Formerly 17-40.05, 17-40.050, 17-40.402, 17-40.422, Amended 7-20-95, 5-7-05.*