
MEMO

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DATE: April 4, 2016

TO: Janet Llewellyn

FROM: Edward de la Parte

SUBJECT: STOPR+2 Comments Regarding Discussion Document – CFWI MFL Rulemaking – 3/3/16

Here are STOPR+2's comments and suggestions regarding the Discussion Document – CFWI MFL Rulemaking – 3/3/16. Comments are highlighted in yellow and new or modified language is presented in red strike-through and underline format.

CFWI MFL Rulemaking Tasks:

- **Uniform CFWI rules must include a single consistent process, as appropriate, to set minimum flows and water levels and water reservations.** (SB 552- Section 7; s. 373.0465(2)(d)4., F.S.)
- **Uniform rules must provide for the consistent use of MFLs and Reservations in the permitting Process.** (CFWI 2020 Guiding Document)

Suggested Approach:

- Include all CFWI MFL/Reservation provisions as part of Uniform CFWI Rules in new rule chapter (Rule 62-45, F.A.C.), which would contain the following:
 - Cites to existing, new or modified MFL/Reservations within the CFWI contained in each WMD's rules.
 - Cites to existing regulatory component of a recovery strategy adopted within all or part of the CFWI prior to July 1, 2016 contained in each WMD's rules.

- Cites to the regulatory component of any new or modified recovery/prevention strategy to be applied to existing, new or modified MFLs within the CFWI contained in each WMD's rules¹
- Incorporates consistent definition of "significant harm" to guide WMDs in establishing MFLs within the CFWI.
- Incorporates single consistent process to set new or modified MFLs/Reservations within the CFWI.
- Incorporates the regulatory component of any recovery/prevention strategy associated with MFLs/Reservations within the CFWI in a consistent manner, if needed.
- Concurrently or following CFWI rulemaking, conduct rule revisions to Rule 62-40, F.A.C., the Water Resource Implementation Rule (State Water Policy) to add provisions that should apply statewide. **This provision should not be included in a document that only relates to the CFWI.**
- The conceptual content of the rules is given below.

CFWI Rules related to MFLs/Reservations Content Outline

- **MFL/Reservation Interagency Coordination**
 - Priority List
 - Single, coordinated Priority List for MFLs/Reservations within the CFWI should be submitted annually by the three WMDs.
 - Identification of new MFL/Reservation water bodies and re-evaluation of existing MFL/Reservation water bodies should be based on historical data, sound science and significance within the CFWI region.
 - Identification of new MFL/Reservation water bodies and re-evaluation of existing MFL/Reservation water bodies should be coordinated among the three WMDs prior to inclusion in the Priority List.
 - Determination of MFL (general – more detail on coordination in section below)

¹ It is not STOPR+2's intent that this provision be interpreted to mean that the regulatory component of the SWUCA Recovery Strategy would apply to uses located outside of SWUCA.

- Recovery and Prevention Strategy (general – more detail on coordination in section below)”
- **Determining the MFL”**
 - Coordination with DEP, other WMDs in MFL determination
 - *Development of all MFLs should include the following basic methods:*
 - Identify the hydrologic and ecological characteristics of the waterbody/watercourse, including the Water Resource Values (WRV) (see 62-40.473(1), F.A.C.) that are applicable to the waterbody/watercourse.
 - Determine the response of the ecological characteristics/WRV to changes in hydrology. Use a predictive simulation model and/or available data to develop a baseline hydrologic regime (e.g., ~~no pumping or~~ an existing conditions hydrologic regime)
 - Develop the MFLs (typically multiple levels or flows) to protect the ecological characteristic WRV that is most sensitive to changes in hydrology.
 - Assess the protection of the MFL hydrologic regime, based on the characteristic that is most sensitive. The difference between the Baseline and MFL hydrologic regimes represents the water that may be available to be allocated in future permits or the amount of recovery required to protect the MFLs.
 - Adopt by rule the CFWI independent scientific peer review policy approved by the steering committee for use in connection with any MFL peer review.
 - Express the MFL using consistent rule language.
 - Establish a consistent methodology for determining MFL status assessment (i.e., not in recovery/prevention, prevention or recovery).
- **Determining the Reservation**
 - Coordination with DEP, other WMDs in Reservation determination
 - Development of all Reservations should include the following basic methods:
 - Describe, to the extent practical, the location, quantity, timing and distribution of the water reserved.

- Determine Reservations for protection of fish and wildlife as specified in Rule 62-40.474(1)(a), F.A.C.
 - Determine Reservations used for protection of public health and safety as specified in Rule 62-40.474(1)(b), F.A.C.
 - Review Reservations periodically at least every five years and revise, if necessary, in light of changed circumstances.
 - Adopt by rule the CFWI independent scientific peer review policy approved by the steering committee for use in connection with any Reservation peer review.
 - Express the Reservation using consistent rule language.
 - Establish a consistent methodology for determining the location, quantity, timing and distribution of water not reserved and available for consumptive use.
- **Developing a Recovery or Prevention Strategy”**
 - Set deadline for adoption and implementation of prevention and recovery strategy for any existing MFLs in recovery or prevention within the CFWI.
 - Water body or area (multiple MFL water bodies) specific
 - May contain both regulatory and non-regulatory provisions, if needed.” However, any regulatory provisions must be incorporated in the appropriate DEP uniform rule.
 - Coordination with DEP, other WMDs in strategy development.
 - If water body in recovery, must include regulatory provisions indicating requirements for consistency with the recovery strategy for:”
 - Renewals/Modifications with increased allocations
 - New applications
 - **Recovery Strategies adopted prior to July 1, 2016 (required by SB 552, Section 7; s. 373.0465(2)(d), F.S.)**
 - Incorporate the regulatory component of the SWFWMD SWUCA recovery strategy in effect on July 1, 2016 within the SFWMD SWUCA in the appropriate DEP uniform rule.
 - Limit regulatory component of the SWFWMD SWUCA recovery strategy in effect on July 1, 2016 to uses located within SWUCA.

- Changes to the SWFWMD SWUCA recovery strategy in effect on July 1, 2016 must be approved according to the procedure set forth.
- **Use of MFLs/Reservations in Review of CUP Applications**
 - Existing Conditions of Issuance
 - (4)(h) Is in accordance with any minimum flow or level and implementation strategy established pursuant to Sections 373.042 and 373.0421, F.S.
 - (4)(i) Will not use water reserved pursuant to Subsection 373.223(4), F.S.
 - If water body is in prevention or recovery, review application for compliance with applicable regulatory prevention or recovery provisions.
 - If water body is currently meeting MFL/Reservation, conduct analysis of effect of proposed withdrawal. Use monitoring data and/or predictive model to determine if proposed withdrawal will individually or cumulatively cause the MFL/Reservation not to be met for the duration of the permit.
 - Post-permit monitoring to ensure MFL continues to be met in accordance with the “Central Florida Water Initiative Area Minimum Flow Levels Water Body Status Assessment.”
 - ~~The districts shall conduct yearly compliance checks by comparing actual exceedance values with MFL exceedance values~~
 - ~~Short term climatic variability should be considered.~~

Proposed Rule 62-40, F.A.C. Revisions

- ~~Conform existing Rule 62-40 provisions to SB 552, other bills that pass through 2016 Legislative Session~~
- ~~Add CFWI MFL provisions that should be applicable statewide~~
- ~~Add CFWI definition of “Harm to the Water Resources” (assuming final should be applicable statewide.)~~
- ~~To meet requirements of SB 552, Section 9, add any additional provisions as determined to be appropriate to “harm” to OFS.~~

This provision should not be included in a document that only relates to the CFWI.

CFWI MFL/Reservation Guidance Memo Topics

- Consider whether the candidate MFL/Reservation water body will materially improve protection of the water resource within the CFWI in light of existing MFLs and Reservations.
- Existing and proposed MFLs and the regulatory component of any existing recovery strategy should not be used in the CUP process until incorporated in the appropriate DEP uniform rule.

cc: Debbie Bradshaw
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