

This draft is for convenience only. Please refer to individual comments as necessary.

This combined draft uses the STOPR+2's document as a base, where STOPR+2's comments are highlighted in yellow and STOPR+2's new or modified language is presented in red strike-through and underline format.

All other comments are included in comment bubbles and attributed to the agency responsible for sending them in. All other additions (modifications or additions) are presented in strike through underline in blue with a comment bubble attributing the change to the agency responsible for sending them in.

### 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 rules<sup>1</sup>
  - 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.

**Commented [MKP1]:** DACS Comment: Note: Would like more discussion on how FDEP CFWI rule would be adopted by WMDs.

**Commented [MKP2]:** SWFWMD Comment: This and the next few items are good additions. They suggest that any new DEP rules would simply refer to or cite the MFLs/Reservations and recovery strategies that currently or will reside in the respective district rules.

**Commented [MKP3]:** SWFWMD Comment: This will be difficult to achieve. First agreement must be reached on a definition and then it must be translated into, presumably, a few words.

**Commented [MKP4]:** SWFWMD Comment: Will need to discuss what the term "process" means.

**Commented [MKP5]:** SJRWMD Comment: What do you mean by "process"? Does "process" mean what is in the "Determining the MFL section"? The guidelines in the original draft of the "Determining the MFL" section below are acceptable, but more specific language may be problematic.

<sup>1</sup> 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.

- 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.
    - Consider exclusions from setting MFLs for waterbodies per 373.0421, F.S.
  - Exempt water bodies
  - Determination of MFL (general – more detail on coordination in section below)
  - Recovery and Prevention Strategy (general – more detail on coordination in section below”
- **Determining the MFL” and MFL Status Assessment**
  - Coordination with DEP, other WMDs in MFL determination
  - Development of all MFLs should include the following basic methods:

**Commented [MKP6]:** SJRWMD Comment: Bullets 1, 2, 3 and 5 within this section seem to be duplicative. Could these bullets be condensed?

**Commented [MKP7]:** DACS Comment: Note: Would like more information and discussion on the link to state-wide application – is it the SB 552 Section 9 provision that is seen as creating this need? How is this consistent with the “CFWI box” concept?

**Commented [MKP8]:** SJRWMD Comment: Current statute only authorizes each Board to list such waterbodies within its jurisdiction. However, each district could identify which bodies are within the CFWI when they submit their lists. Staff would also be comfortable with a requirement that the districts hold a joint workshop in the CFWI area to discuss the proposed priority lists.

**Commented [MKP9]:** SWFWMD Comment: I do not think this is necessary. An alternative would be to simply identify CFWI Planning Area water bodies on each district’s respective priority list.

**Commented [MKP10]:** SJRWMD Comment: Staff recommends that the statutory language be tracked (i.e., “best available information,” “importance of the waters to the state or region” and “the existence or potential for significant harm to the water resources or ecology of the state or region.”

**Commented [MKP11]:** SJRWMD Comment: Clarify that it will be each districts’ respective list.

**Commented [MKP12]:** SWFWMD Comment: Regarding “List.” Again, I would prefer having the CFWI water bodies identified on each district’s individual list.

**Commented [MKP13]:** SFWMD Comment: This doesn’t mean no protection as all applicants must meet harm criteria, but does potentially alter the need for setting MFLs.

**Commented [MKP14]:** DACS Addition

**Commented [MKP15]:** SJRWMD addition

**Commented [MKP16]:** SJRWMD Comment: The bullets from DEP’s original proposal are consistent with the SJRWMD process.

**Commented [MKP17]:** DACS amended the order of the below. See DACS’ document for order provided. DACS’ additions included below.

- 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 related to CUPs. 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)
- Based on responses to hydrology, identify the limit at which further WITHDRAWALS would be SIGNIFICANTLY harmful to the waterbody.
- Identify changes and structural constraints on the waterbody and the effects of such changes and alterations per 373.0421, F.S.
- Identify existing structural changes and /or basin hydrological changes for existing condition that are not due to CUPs.
- Develop the MFLs (~~typically may be~~ multiple levels or flows) to protect the ecological characteristic WRV that is most sensitive to changes in hydrology [1] related to CUPs; [2] caused by withdrawals while considering the changes and constraints identified above.
- Identify the allowable withdrawals that would result in significantly harmful impacts (Note that significantly harmful is generally different from the permit Harm criteria)
- Where necessary identify a permit level regulatory Harm criteria
- 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.

Commented [MKP18]: DACS addition

Commented [MKP19]: SWFWMD Comment: While the phrase "no pumping" is somewhat awkward, the example of a baseline regime that reflects hydrologic conditions expected in the absence of withdrawals should be preserved and not deleted as shown here. To me a non-withdrawal impacted regime should typically serve as a primary basis for MFLs development

Commented [MKP20]: SJRWMD Comment: This is problematic. This proposed deletion raises significant issues regarding apportionment and should be discussed by the districts. As an alternative, should this parenthetical be deleted for now?

Commented [MKP21]: SFWMD addition

Commented [MKP22]: DACS addition

Commented [MKP23]: SFWMD suggested change

Commented [MKP24]: [1] DACS addition

Commented [MKP25]: [2] SFWMD addition

Commented [MKP26]: DACS addition

Commented [MKP27]: SFWMD suggested strike and comment: Probably not. If baseline is no harm and mfl is significant harm.

Commented [MKP28]: SJRWMD Comment: Staff recommends that this could be better accomplished through an MOU wherein the districts commit to the process that was already developed in the March 2014 CFWI Standard Peer Review Process for MFLs and Reservations document. This would provide more flexibility if the process needs to be changed going forward.

Commented [MKP29]: SWFWMD Comment: Inclusion in rule does not seem necessary.

Commented [MKP30]: SJRWMD Comment: Staff believes we can reach consensus on a common means of expressing MFLs even though there may be some differences in the methodology of determining the MFL/reservation.

- 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
  - Focus on non-regulatory provisions. Modify as necessary to provide resource development projects to meet existing and future water demands
  - 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.

**Commented [MKP31]:** SJRWMD Comment: Recommend this is done in accordance with the “Central Florida Water Initiative Area Minimum Flow Levels Water Body Status Assessment” document dated February 2014.

**Commented [MKP32]:** SWFWMD Comment: Inclusion in rule does not seem necessary.

**Commented [MKP33]:** SWFWMD Comment: Seems like most of the items in this section are already include in the Water Resource Implementation Rule.

**Commented [MKP34]:** SWFWMD Comment: Delete the phrase “at least every five years.” I remember seeing a five-year requirement for reservations somewhere, but did not see it today when I looked in the statutes or Water Resource Implementation Rule.

**Commented [MKP35]:** SWFWMD Comment: Not necessary as Rule 62-40.473 includes language on peer review that was added as a result of the CFWI peer review process.

**Commented [MKP36]:** SJRWMD Comment: See [SJRWMD] comments above.

**Commented [MKP37]:** SWFWMD Comment: The districts have different working approaches for prevention strategies that will need to be discussed. Also adoption of prevention strategies does not seem necessary.

**Commented [MKP38]:** SJRWMD Comment: Statute and the Water Resource Implementation Rule already provide guidance on timing. Not clear on how DEP would set deadlines for each waterbody. At this time, SJRWMD would prefer no specific deadline (date) in rule. If DEP feels that a deadline is necessary, would a better approach be for the districts to submit a priority list and schedule for development of these p/r strategies? Then DEP could provide comments on the list.

If adopted as suggested, could set the districts up for issues related to section 403.412, F.S.

**Commented [MKP39]:** FDACS Addition

**Commented [MKP40]:** SWFWMD Comment: Or in the district-specific rules, as appropriate?

- If water body in recovery/prevention, must include regulatory provisions indicating requirements for consistency with the recovery/prevention strategy for:
  - Renewals/Modifications with increased allocations
  - New applications
- Add discussion of apportionment methodology?
- Add language that no permittee will be responsible for more than its proportionate share?
- **Recovery Strategies adopted prior to July 1, 2016 (required by SB 552, Section 7; s. 373.0465(2)(d), F.S.)** Modify as necessary to provide resource development projects to meet existing and future water demands
  - Incorporate the regulatory component of the SWFWMD SWUCA recovery strategy in effect on July 1, 2016 within the SWFWMD 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 Where necessary identify a permit level regulatory Harm criteria
    - (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.

Commented [MKP41]: FDACS addition

Commented [MKP42]: FDACS addition

Commented [MKP43]: SFWMD Comment: Assuming we are now only setting MFLs where withdrawals are having an impact. There are some MFL waterbodies (SF included) where consumptive uses don't have an effect on the waterbody.

Commented [MKP44]: SJRWMD addition and comment: How will districts handle the apportionment of impacts?

Commented [MKP45]: SJRWMD addition and comment: This language appears in the recently adopted SRWMD MFL rules. It would also seem appropriate to include for the CFWL.

Commented [MKP46]: FDACS addition

Commented [MKP47]: FDACS addition

Commented [MKP48]: FDACS language suggested: Use predictive model or appropriate analytical tool to determine if the proposed withdrawal will individually or cumulatively cause the MFL to not be met throughout the duration of the permit

- o 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~~
  - The districts should have real-time data available and, at a minimum, conduct yearly compliance checks to determine any MFL exceedances
  - ~~Short term climatic variability should be considered.~~

**Commented [MKP49]:** FDACS comment: Recommend separating this from Review of CUP applications.

**Commented [MKP50]:** SJRWMD Comment: Who is responsible for this monitoring? The districts are already conducting monitoring in the CFWI area. Will permittees be responsible for some of the monitoring?

**Commented [MKP51]:** SFWMD proposes edits to initially proposed language (struck by STOPR+2 above) that result in this sentence.

**Commented [MKP52]:** SFWMD Comment: Short-term climatic variability already included in setting the MFL via the duration and frequency component.

**Commented [MKP53]:** FDACS Comment: Note: would like more discussion on how SB 552 Section 9’s spring definition of harm relates to the CFWI efforts for a harm definition, uniform CFWI MFL process, and the concept of a “CFWI box” vs what should, or should not, be applicable state-wide.

**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 OES.~~

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

**Commented [MKP54]:** SJRWMD Comment: Based on all of the above, is guidance memo really needed?

**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.~~

**Commented [MKP55]:** SFWMD Comment: This item is problematic. Not sure what “materially improve” means. Also not sure about “protection of the water resource” means. I guess it was meant to be plural, i.e., water resources.

**Commented [MKP56]:** SJRWMD Comment: Statute already provides guidance on what waterbodies are to be included on the priority list and schedule. Also, see comments above on priority list.

cc: Debbie Bradshaw  
Krystal Azzarella  
Silvia Alderman

**Commented [MKP57]:** SJRWMD Comment: This could be problematic if SJRWMD has to adopt the rule first and then DEP incorporates the district rule by reference. What happens if there is a gap between adoption by the districts and incorporation by reference by DEP. Case law supports the concept that agencies must follow their adopted rules.

**Commented [MKP58]:** SFWMD Comment: This seems legally problematic, assuming that some rules may be in individual district rules.