

CFWI MFL Rulemaking Tasks:

- **Uniform CFWI rules must include a single consistent process, as appropriate, to set minimum flows and minimum water levels and water reservations.** (SB 552 –Section 7; s. 373.0465(2)(d)4., F.S.)
- **Uniform Rules must include existing recovery strategies within the Central Florida Water Initiative Area adopted before July 1, 2016 (SB 552 –Section 7; s. 373.0465(2)(d), F.S.) (SWUCA is the only existing Recovery Strategy at this time).**
- **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 required to meet the rulemaking tasks above as part of Uniform CFWI Rules in new rule chapter (Rule 62-45, F.A.C.?).
- **Discussion Issue: Should all existing/future MFLs in the CFWI Area and related regulatory Recovery/Prevention Strategies be adopted by reference in the CFWI rules? Alternatively, should the CFWI rules recognize the MFLs and strategies adopted in WMD rules (by citation) for application just within the adopting district?**
 - Adoption by reference would make the MFL applicable to withdrawals throughout the CFWI.
 - Waterbodies would be protected from significant harm regardless of the district in which the withdrawal is located.
 - Ability to challenge existing MFL rules when adopted by reference?
 - How to handle existing MFLs which require, but do not yet have, a recovery/prevention strategy?
 - The need to apply a specific Recovery or Prevention Strategy to the entire CFWI Area may vary case by case.
 - The rules are required to include the SWUCA Recovery Strategy. Does this assume that the SWUCA MFLS should also be adopted in the rules? Should the SWUCA recovery strategy apply throughout the CFWI or be limited to the SWUCA? Can the SWUCA Recovery Strategy be adopted without adopting the SWUCA MFLs?
 - How would new or revised MFLs/Strategies be handled? Would rulemaking by both the WMD and the DEP be required?

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Llewellyn - Discussion Document – CFWI MFL Rulemaking – 4/198/16

- ~~• 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.~~
- The conceptual content of the rules is given below.

CFWI Rules related to MFLs/Reservations – Conceptual Content Outline

1. MFL/Reservation Interagency Coordination

- Priority List
 - Each WMDs' priority list shall identify the MFLs and reservations on the list that are within the CFWI Area.
 - Prior to approval of the proposed priority list by the respective Governing Boards and submittal to the DEP, the WMDs shall jointly hold a workshop in the CFWI Area to receive public comment on those MFLs on the proposed list within the CFWI.
- Determination of MFL/Reservation (general – more detail on coordination in section below)
- Recovery and Prevention Strategy (general – more detail on coordination in section below)

2. Determining the MFLs

- Will include c~~o~~ordination with DEP and CFWI Area WMDs, 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 environmental values ~~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 characteristic/environmental value~~ WRV to changes in hydrology. Use a predictive simulation model and/or available data to develop a baseline hydrologic regime that represents the existing hydrologic regime absent consumptive uses. (e.g., no pumping or an existing conditions hydrologic regime)
 - ~~Develop the MFLs (typically multiple levels or flows) to protect the~~ environmental value ~~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.~~
 - Express the MFL using consistent rule language.
 - Periodically review the status assessment of the MFL water body, but no less frequently than every five years.

Commented [LJ1]: Suggest an MOU wherein the WMDs commit to the processes in March 2014 CFWI Standard Peer Review Process for MFLs and Reservations and February 14 Central Florida Water Initiative Area Minimum Flow and Levels Water Body Status Assessment Document. This would provide more flexibility going forward as well as address difficulties with JAPC in adopting documents by reference.

3. Determining the Reservation

- Will include coordination with DEP and CFWI Area WMDs.

- Determine whether the Reservation is required for the protection of fish and wildlife and/or the protection of public health and safety as specified in Rule 62-40.474(1), F.A.C.
- Describe, to the extent practical, the location, quantity, timing and distribution of the water reserved.
- Review Reservations periodically, at least every five years, and revise if necessary in light of changed conditions.

3. Developing a Recovery or Prevention Strategy

- May be for individual water bodies or areas with (multiple MFLs-water bodies) specific.
- May contain both regulatory and non-regulatory provisions, as needed. Regulatory provisions must be adopted by rule by XX.
- ~~Will include cCoordination with DEP and CFWI Area WMDs. -other WMDs in strategy development~~
- If water body is in recovery, must include regulatory provisions indicating requirements for consistency with the recovery strategy for:
 - Consumptive use permit rRenewals with no increase in allocation
 - Consumptive use rRenewals/mModifications with increased allocations
 - New consumptive use permit applications

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4. Recovery Strategies adopted prior to July 1, 2016 (required by SB 552, Section 7; s. 373.0465(2)(d), F.S.)

5. 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 recovery or prevention, review application for compliance with the applicable regulatory recovery or prevention 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 the proposed withdrawal will individually or cumulatively cause the MFL/Reservation to not be met throughout the duration of the permit
- ~~Post permit monitoring to ensure MFL continues to be met~~
 - ~~The districts should conduct yearly compliance checks by comparing actual exceedance values with MFL exceedance values~~
 - ~~Short term climatic variability should be considered~~

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

- ~~Conform existing Rule 62-40 provisions to SB 552, other bills that pass during 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 related to “harm” to OFS.~~