

Second-Third Draft Concept Document

- (1) “Central Florida Water Initiative Area” or “CFWI Area” is as defined in section 373.0465037(12)(a), F.S.
- (2) “CFWI Supplemental Applicant’s Handbook for Consumptive Use Permitting” means an applicant’s handbook that supplements, and in places supersedes, SFWMD’s, SWFWMD’s, and SJRWMD’s applicant’s handbooks for use within the CFWI Area and which is incorporated by reference and made available at [gateway] and [dep website]. – **This item to be further discussed as applicant’s handbook language is further along on all reg team topics.**
- (3) Within the CFWI Area, “harmful to the water resources,” as used in section 373.219(1), F.S., means ~~an adverse impact resulting from a consumptive use of water that would not meet~~ the conditions for issuance of permits set forth in 62-41.301(g)1.-5., as those conditions are evaluated in the CFWI Supplemental Applicant’s Handbook.
- (4) Significant harm is more severe than harm and is the fundamental adverse alteration of ecosystem structure, ecosystem functions, or important environmental values recognized in the State Water Resources Implementation Rule (Rule 62-40.473, F.A.C.). – **This item to be further discussed in the future when discussing MFLs –**

62-41.301 Uniform Conditions for Issuance of Permits within the Central Florida Water Initiative Area.

- The following conditions for issuance of permits shall apply, without the need for further rulemaking, within the CFWI Area.

(1) To obtain a consumptive use permit, renewal, or modification, an applicant must provide reasonable assurance that the proposed consumptive use of water, on an individual and cumulative basis:

- (a) Is a reasonable-beneficial use;
- (b) Will not interfere with any presently existing legal use of water; and
- (c) Is consistent with the public interest.

(2) In order to provide reasonable assurances that the consumptive use is reasonable-beneficial, an applicant shall demonstrate that the consumptive use:

- (a) Is a quantity that is necessary for economic and efficient use.
- (b) Is for a purpose and occurs in a manner that is both reasonable and consistent with the public interest;
- (c) Will utilize a water source that is suitable for the consumptive use;
- (d) Will utilize a water source that is capable of producing the requested amount;
- (e) Except when the use is for human food preparation or direct human consumption, will utilize the lowest quality water source that is suitable for the purpose and is technically, environmentally, and economically feasible;
- (f) Will not cause harm to existing offsite land uses resulting from hydrologic alterations;
- (g) Will not cause harm to the water resources of the area in any of the following ways:
 1. Will not cause harmful water quality impacts to the water source resulting from the withdrawal or diversion;
 2. Will not cause harmful water quality impacts from dewatering discharge to receiving waters;
 3. Will not cause harmful saline water intrusion or harmful upconing;
 4. Will not cause harmful hydrologic alterations to natural systems, including wetlands or other surface waters; and
 5. Will not otherwise cause harmful hydrologic alterations to the water resources of the area;

(h) Is in accordance with any minimum flow or level and implementation strategy established pursuant to Sections 373.042 and 373.0421, F.S.; and

(i) Will not use water reserved pursuant to Subsection 373.223(4), F.S.

Commented [KPM1]: A number of comments, and significant discussion was devoted to whether or not to move g.1.-5. to the definition. We discussed eliminating 1-5 in the COI as well as duplicating it both there and here. Ultimately, I would recommend we only reference g.1.-5. My reasoning is that (1) in the future, I want to it to be painfully clear when someone tries to amend the COI and for it not to get lost in amending “just a definition”; (2) I want to make it very clear to all users exactly what they have to do, and spelling it out in one location does that; (3) it would not be consistent with the consistent COI that existing in 4 of the districts, but (4) I believe the language I have stuck may have given rise to some of the concern (what does that additional language mean?) and so now it is a more clear, and simpler, cross reference.

CFWI – 1. Harmful water quality impacts to the water source resulting from the withdrawal or diversion

SFWMD	SWFWMD	SJRWMD	Concepts for CFWI
<p>3.5 Pollution of the Water Resources The issuance of a water use permit shall be denied if the withdrawals would cause significant degradation of surface water or groundwater quality through the induced movement of pollutants into a water resource that is not polluted. Significant water quality degradation may result from altering the rate or direction of movement of pollutants, as evidenced by the predicted influence the water withdrawals would have on inducing movement of the pollutants or as indicated by a sustained increase in background levels in pollutant concentrations.</p>	<p>3.5 POLLUTION OF THE WATER RESOURCES. A WUP application shall be denied if a water withdrawal would cause harmful water quality impacts to the water sources resulting from the withdrawal or diversion, causing pollutants to migrate in the aquifer. Generally, movement of a contamination plume is considered harmful if the withdrawal would cause violations to water quality standards in areas that previously would have been unaffected. In evaluating this criterion, the District will consider: A. Whether the withdrawal would alter the rate or direction of movement of a plume (horizontally or vertically) that has been defined by the DEP or the EPA. B. Whether the withdrawal would increase the potential for harm to the public health and safety.</p>	<p>3.3.1 ... A site-specific determination of available water will involve evaluation of the following: ... (d) Proximity of pollution or contamination sources and potential for significant pollutant or contaminant transport towards wellfields (Section 2.3(g)1.). ... Pollution or contamination of wellfields is inconsistent with the public interest as well as not reasonable-beneficial. Additionally, staff will recommend denial of an application for any one of the following reasons: first, the occurrence of water resource shortages in the applicant's area does not allow the permitting of additional quantities of water beyond those allocated in existing permits; second, no available water is available on a site-specific basis; or third, the Governing Board had indicated that no additional water is presently available on a regional basis for use within the aquifer or basin.</p>	<p>The issuance of a consumptive use permit shall be denied if the withdrawals would cause harmful water quality impacts to the water source resulting from the withdrawal or diversion through: (a) the induced movement of a contamination plume; or (b) the alteration of the rate or direction of the movement of a contamination plume, as evidenced by the predicted influence the water withdrawals would have on inducing movement of the contamination plume or as indicated by a sustained increase in background levels in contaminant concentrations.</p>

Within the Central Florida Water Initiative Area as defined in 373.037(1)(a), F.S., the following section “CFWI – 2.” shall supersede in its entirety section 2.3.2.B.2.d.i. of the SFWMD; section 2.4.6. of the SWFWMD handbook; and section 2.3(g)2. of the SJRWMD handbook.

CFWI – 2. Harmful water quality impacts from dewatering discharge to receiving waters

SFWMD	SWFWMD	SJRWMD	Concepts for CFWI
<p>2.3.2.B.2. Criteria for Use Classes; Applicants for all individual dewatering permits must satisfy the conditions of issuance (Rule 40E-2.301, F.A.C.). ... In order to provide reasonable assurances that water reserved in Rule 40E-10.041, F.A.C., will not be withdrawn, all water from the dewatering activity shall be retained onsite. If the applicant demonstrates that retaining the water onsite is not feasible, the project shall be modified to demonstrate, pursuant to Subsection 3.11, that reserved water will not be withdrawn. ... Permit applications for a dewatering permit must:</p> <p>a. Provide reasonable assurances that the project will not cause harm to the resource, existing legal uses, offsite land uses, and wetland environments or cause harmful saline water intrusion or movement of pollutants, as described in Chapter 3 of this Applicant’s Handbook. ...</p> <p>...d. Provide reasonable assurances that all dewatering water will be retained on the project site, unless the applicant demonstrates that it is not technically feasible to retain the dewatering water onsite. If any offsite discharge is requested due to demonstrated technical infeasibility of onsite retention, the applicant must provide the following information with the permit application:</p> <p>i. Documentation of authorization that allows the applicant to discharge directly into the receiving water body and/or adjacent lands (e.g., NPDES or ERP permit), and a demonstration that the receiving water body or adjacent lands are capable of accepting the dewatering discharge;</p> <p>ii. An operational plan which demonstrates that the discharge to the receiving water body will meet all applicable State Water Quality standards prior to discharge;</p> <p>iii. An operational plan which demonstrates that the discharge to protected wetlands will not contain turbidity levels in violation of State Water Quality standards (must be less than 29 NTU above background levels) prior to discharge;</p> <p>...f. Provide reasonable assurances that fresh dewatering water will not be discharged to saline tidal waters, unless the applicant demonstrates that it is not technically feasible to prevent discharge to saline water and requests specific authority from the District for discharge. Saline dewatering water, as defined in this Applicant’s Handbook, may be discharged to tidewater;</p> <p>...</p>	<p>2.4.6 MINING OR DEWATERING. Applicants who have obtained and are in compliance with a National Pollutant Discharge Elimination System (NPDES) or Environmental Resource Permit for dewatering shall be found to not cause harmful water quality impacts from dewatering discharge to receiving waters.</p>	<p>2.3 Reasonable-Beneficial Use Criteria (g)(2) The use must not cause harmful water quality impacts from dewatering discharge to receiving waters. Applicants who have obtained and are in compliance with a National Pollutant Discharge Elimination System (NPDES) or Environmental Resource Permit for dewatering shall be considered to not cause harmful water quality impacts from dewatering discharge to receiving waters.</p>	<p>The use must not cause harmful water quality impacts from dewatering discharge to receiving waters. Applicants who have obtained and are in compliance with a National Pollutant Discharge Elimination System (NPDES) or Environmental Resource Permit for dewatering shall be considered to not cause harmful water quality impacts from dewatering discharge to receiving waters.</p>

CFWI – 3.1. Harmful saline water intrusion or harmful upconing, definitions

SFWMD	SWFWMD	SJRWMD	Concepts for CFWI
<p>Upconing - Upward migration of mineralized or saline water as a result of pressure variation caused by withdrawals.</p> <p>Saline Water Interface - Hypothetical surface of chloride concentration between freshwater and saline water where the chloride concentration is 250 mg/L at each point on the surface.</p> <p>Saline Water - An aqueous solution with a chloride concentration greater than 250 mg/L and less than that of seawater.</p> <p>Freshwater - An aqueous solution with a chloride concentration equal to or less than 250 milligrams per liter (mg/L).</p>	<p>upconing – process by which saline water, which underlies fresh water in the same or different aquifers, rises up into the fresh water zone as a result of pumping water from the fresh water zone (U.S.G.S., August 1989).</p> <p>saline water interface – any plane or surface within the transition zone between fresh water and saline water that is defined by a specific concentration of total dissolved solids.</p> <p>(p) fresh water – water that contains less than 3,000 milligrams per liter (mg/l) of total dissolved solids (TDS). Also, water having a TDS concentration between 1,000 mg/l and 3,000 mg/l can be termed slightly saline fresh water; and, generally, water having a TDS concentration greater than 500 mg/l TDS is undesirable for drinking and many industrial uses.</p> <p>(kk) saline water – water that generally is considered unsuitable for human consumption or for irrigation because of its high content of dissolved solids. Commonly expressed as milligrams per liter (mg/l) of dissolved solids, with moderately saline as 3,000-10,000 mg/l; very saline as 10,000-35,000 mg/l, and brine as more than 35,000 mg/l (U.S.G.S., August, 1989).</p> <p>(mm) saline water intrusion – the movement of more saline water laterally inland into a fresher water aquifer from coastal areas, or the movement of more saline water vertically upward into a fresher water aquifer. Also, any movement of more saline surface or ground water into a fresher-water surface water body.</p>	?	<p>(a) “Upconing” means the process by which <u>more</u> saline water underlying a fresher water zone in the same or different aquifers, rises into the fresher water zone as a result of pressure variations caused by withdrawals.</p> <p>(b) “Saline water interface” means any plane or surface within the transition zone between fresher water and <u>more</u> saline water that is defined by a specific concentration of total dissolved solids.</p> <p>(c) “Saline water intrusion” means the movement of more saline water laterally inland into a fresher water aquifer from coastal areas; the movement of more saline water vertically upward into a fresher water aquifer; any other movement of <u>more</u> saline surface water into a fresher water aquifer; or any movement of <u>more</u> saline surface water or ground water into a fresher water surface water body.</p>

Commented [KPM2]: There are some suggested edits to these definitions and to the salinity section. However, I am looking forward to continuing the salinity discussion with the subgroup, whose recommendation(s) should be in soon. Once we see their recommendation, we can discuss the pros and cons as a group and continue to provide edits to this section.

CFWI – 3.2. Harmful saline water intrusion or harmful upconing

SFWMD	SWFWMD	SJRWMD	Concepts for CFWI
<p>3.4 Saline Water Intrusion A water use permit application will be denied if the application requests freshwater withdrawals that would cause harm to the water resources as a result of saline water intrusion. Harmful saline water intrusion occurs when: A. Withdrawals result in the further movement of a saline water interface to a greater distance inland toward a freshwater source except as a consequence of seasonal fluctuations; climatic conditions, such as drought; or operation of the Central and Southern Flood Control Project, secondary canal systems, or stormwater systems. B. Withdrawals result in the sustained upward movement of saline water. Sustained upward movement is the level of movement that persists when the withdrawals have ceased. When the saline interface occurs beneath the point of withdrawal, the maximum amount of pumpage from any well shall be constrained as follows: [EQUATION] In order to provide reasonable assurances that harmful saline water intrusion will not occur, the applicant shall demonstrate that: 1. A groundwater divide (mound of freshwater) greater than one foot higher than the potentiometric head at the saline water source exists between the withdrawal point and the saline water source (defined by the location of the 250 mg/L isochlor); or, 2. A hydrologic analysis of groundwater flow demonstrates that there will be no further net inflow of groundwater from the saline water source toward the withdrawal point; except as a consequence of seasonal fluctuations; climatic conditions, such as drought; or operation of the Central and Southern Flood Control Project, secondary canal systems, or stormwater systems, or, 3. Other evidence shows saline water intrusion will not cause harm to the wellfield and water resource, if pumpage is allowed or increased. Should the applicant’s proposed withdrawals occur in an area where the saline water interface is unstable (as demonstrated by increases in measured chloride concentration levels within the influence of the proposed use), the applicant shall determine the cause of the saline movement and the extent of future movement through the duration of the permit and shall demonstrate that the proposed withdrawal will not cause harmful saline intrusion through the duration of the permit. 3.4.1. Use of Saline Water The District encourages the use of the lowest water quality for the use intended, while also providing for the long-term protection of the water resources. The use of saline water is permitted by the District as a source of supply for all uses. The use of saline water may cause limited increases in salinity but not to the extent of interfering with any presently existing legal use of water, otherwise harming water resources, or rendering the resource no longer usable by the permittee. ...</p>	<p>3.4 SALINE WATER INTRUSION. A WUP application shall be denied if the application requests quantities that would cause harmful saline water intrusion, or harmful upconing. Harmful saline water intrusion occurs if the Applicant’s withdrawals are projected to cause movement of the saline water interface, or upconing that adversely affects, or is predicted to adversely affect, other existing legal uses of water; the Applicant; or the public health, safety, and general welfare. Compliance with the performance standards for Permittees encompassed within the Comprehensive Plan set forth in Rule 40D-80.073, F.A.C., shall be addressed in such Rule.</p>	<p>3.4 Saline Water Intrusion The use must not cause harmful saline water intrusion or harmful upconing. Harmful saline water intrusion or harmful upconing is defined as saline water encroachment which detrimentally affects the applicant or other existing legal users of water, or is otherwise detrimental to the public interest as defined in Section 3.10. The District shall consider the following factors for determining whether saline water intrusion or upconing is harmful: (a) Movement of a particular saline water interface to a greater distance inland or towards a wellfield than has historically occurred as a consequence of seasonal fluctuations or drought. A saline water interface is defined as a zone of dispersion between two geochemical types of groundwater or a zone of change between areas of groundwater with significantly different chloride concentrations. (b) The amount and rate of increase from background levels in chloride concentrations at the base of the aquifer or producing zone within the area of influence of the well field. Background levels are the chloride concentrations that existed before withdrawals commenced. (c) Whether there has been a detrimental change in the geochemistry of the groundwater at the base of the aquifer or producing zone within the area of influence of the wellfield towards a saline water composition. An example of such a change in geochemistry is where a newly constructed well may yield a bicarbonate type water initially, but after withdrawals begin the well (or nearby wells) yield a sodium chloride type water. This change is an indication that intrusion of saline water or upconing has taken place during the withdrawal of water. In each situation, the determination of harmful saline water intrusion or harmful upconing will be made on a case-by-case basis. See also 2.3(g)3., Reasonable-Beneficial Use Criteria</p>	<p>A withdrawal must not cause harmful saline water intrusion that results in the further movement of a saline water interface toward a freshwater source. The District shall not consider saline water intrusion resulting from take into consideration seasonal fluctuations, climatic conditions, such as a drought; or operation of the Central and Southern Flood Control Project, secondary canals or stormwater systems. A withdrawal must not cause a harmful upconing caused by withdrawals of water that results in the upward movement of saline water that persists when the withdrawals have ceased. The Department encourages the use of the lowest water quality for the use intended, while also providing for the long-term protection of the water resources. The use of saline water is permitted by the District as a source of supply for all uses. The use of saline water may cause limited increases in salinity but not to the extent of interfering with any presently existing legal use of water, otherwise harming water resources, or rendering the resource no longer usable by the permittee.</p>

Harmful hydrologic alterations to natural systems, including wetlands or other surface waters

EVALUATION OF IMPACTS TO THE WATER RESOURCES:

SFWMD	SWFWMD	SJRWMD	Concepts for CFWI
<p>3.3 Evaluation of Impacts to Water Resources This Section establishes the standards and thresholds for protection of wetlands and other surface waters from harm pursuant to the condition for permit issuance in Rule 40E-2.301, F.A.C., including ensuring a water use shall not be harmful to the water resources of the area and is otherwise consistent with the overall objectives of the District. The standards and thresholds specified herein shall apply to all water uses, including applications for the initial use of water and modifications and renewals of consumptive use permits, and authorized water uses, herein referred to as the "water use". In its evaluation of the applicant's water use, the District shall consider the extent of hydrologic alterations caused by the applicant's water use, except as otherwise provided herein. To provide reasonable assurances of compliance with the condition of issuance in Rule 40E-2.301, F.A.C., an applicant must demonstrate that hydrologic alterations caused by the water use shall not adversely impact the values of wetland and other surface water functions so as to cause harm to the: A. Abundance and diversity of fish, wildlife and listed species; and, B. Habitat of fish, wildlife, and listed species. For the purposes of this Section, an adverse impact to the value of wetland and other surface water functions in violation of the above shall constitute "harm." This Section requires assessment of whether impacts of a water use constitute harm. If a water use would cause harm, then the applicant must comply with the elimination or reduction of harm provisions pursuant to Subsection 3.3.5, and mitigation requirements of Subsection 3.3.6. Impacts to wetlands and surface water bodies associated with wetland enhancement, restoration, creation, preservation or other mitigation permitted pursuant to Part IV of Chapter 373, F.S., or other wetland regulatory program implemented by a local, regional, or federal governmental entity, shall be considered under this Section. Impacts on wetlands and other surface waters not caused by the water use, including, but not limited to, impacts caused by existing surface water management activities, drainage, water table lowering, roads, levees and adjacent land uses, are not considered under this Section. The hydrologic characteristics resulting from construction or alterations undertaken in violation of Chapter 373, F.S., or District rule, order or permit shall be evaluated based on historic, pre-violation conditions, as if the unauthorized hydrologic alteration had not occurred.</p>	<p>3.3 EVALUATION OF IMPACTS TO WATER RESOURCES. The withdrawal of water must not cause adverse impacts to environmental features. Where appropriate, District staff will review the Applicant's submittal and identify the environmental features that are directly related to the water resources of the District and evaluate the impact of the Applicant's withdrawal, combined with other withdrawals, on those environmental features. District staff may inspect the site to delineate environmental features and evaluate the effects of withdrawal. If withdrawals are determined by the District to have impacted or anticipated to impact environmental features, an Applicant shall supply additional information regarding the existing status and condition of associated environmental features. This information may consist of aerial photographs, topographic maps, hydrologic data, environmental assessments or other relevant information. Baseline hydrologic and/or environmental data collected prior to permit application shall be provided if available and requested by the District. Environmental features that will be evaluated by District staff when determining impacts include: 1. Surface water bodies such as lakes, ponds, impoundments, sinks, springs, streams, canals, estuaries, or other watercourses. 2. Wetland habitats. 3. On-site environmental features and their relationship to local and regional landscape patterns. 4. Habitat for threatened or endangered species. 5. Other environmental features which are dependent upon the water resources of the District. Potential environmental impacts will be evaluated by comparing the existing natural system to the predicted post withdrawal conditions. Previous physical alterations to environmental features, such as drainage systems or water control structures will be considered. The District's objective is to achieve a reasonable degree of protection for environmental features consistent with the overall protection of the water resources of the District. Listed below are the performance standards District staff will use to ensure that adverse impacts to environmental features do not occur. Impacts to canals, springs, and estuaries are considered under the streams criteria. Impacts to ponds, sinks, and impoundments are considered under the lakes criteria. Compliance with the performance standards shall be addressed as specified in Rule 40D-80.073, F.A.C. for Permittees encompassed within the Comprehensive Plan.</p>	<p>3.7 Otherwise Harmful (d) The use must not cause harmful hydrologic alterations to natural systems, including wetlands or other surface waters (on site or off-site). A proposed use will be denied as not reasonable-beneficial if the use would alter the existing hydrology and cause an unmitigated adverse impact to natural systems, including wetlands or other surface waters. Methods for avoiding harm include: reducing the amount of water withdrawn, modifying the method or schedule of withdrawal, mitigating the damages caused, or not increasing the potential for flooding. An applicant must avoid or mitigate impacts to wetlands or other surface waters wherever they are located. (e) The use must not otherwise cause harmful hydrologic alterations to the water resources of the area.</p>	<p>This Section establishes the standards and thresholds for protection of wetlands and other surface waters from harm pursuant to the conditions for permit issuance in Rule 62-41.301, F.A.C. The standards and thresholds specified herein shall apply to all water uses, including applications for the initial use of water and modifications and renewals of consumptive use permits, and authorized water uses, herein referred to as the "water use". In its evaluation of the applicant's water use, the extent of hydrologic alterations caused by the applicant's water use shall be considered, except as otherwise provided herein. To provide reasonable assurances of compliance with the condition of issuance in Rule 62-41.301, F.A.C., an applicant must demonstrate that hydrologic alterations caused by the water use shall not adversely impact the values of wetland and other surface water functions so as to cause harm to the: A. Abundance and diversity of fish, wildlife and listed species; and, B. Habitat of fish, wildlife, and listed species. In reviewing impacts to wetlands and other surface water bodies associated with wetland enhancement, restoration, creation, preservation or other mitigation permitted pursuant to Part IV of Chapter 373, F.S., or other wetland regulatory program implemented by a local, regional, or federal governmental entity, the District shall take into account the functional loss associated with the wetland or other surface water and its role in mitigating other losses. Districts shall not consider impacts to wetlands and other surface waters not caused by the water use, including, but not limited to, impacts caused by existing surface water management activities, drainage, water table lowering, roads, levees and adjacent land uses. Potential environmental impacts will be evaluated by comparing the existing natural system to the predicted post withdrawal conditions. Previous physical alterations to environmental features, such as drainage systems or water control structures will be considered. Areas impacted by activities in violation of an Agency rule, order, or permit adopted or issued pursuant to Chapter 373, F.S., or Part VIII of Chapter 403, F.S. (1984 Supp.) as amended, will be evaluated as if the activity had not occurred</p>

DELINEATION, WETLANDS EVALUATED

SFWMD	SWFWMD	SJRWMD	Concepts for CFWI
<p>A. Delineation Wetlands and other surface waters within the area of influence of the water use, delineated pursuant to Rules 62-340.100 through 62-340.600, F.A.C., as ratified by Section 373.4211, F.S., are subject to this subsection, except as provided in Subsection 3.3.1.B, below. In accordance with Subsection 62-340.300(1), F.A.C., reasonable scientific judgment shall be used to evaluate the existence and extent of a wetland or other surface water, including all reliable information, such as visual site inspection and aerial photo interpretation, in combination with ground truthing. In addition, relevant information submitted pursuant to Chapter 62-340, F.A.C, in support of an ERP/SWM Permit shall be considered. Field delineations of wetlands and other surface waters boundaries shall be required if such boundaries are in dispute.</p>	<p>3.3.1.1.1 WETLANDS EVALUATED. In reviewing an application for a WUP, the District evaluates impacts to wetlands that are predicted to occur as a result of water withdrawals for those wetlands defined in section 373.019(27), F.S. and Rule 62-340, F.A.C. 3.3.1.1.2 WETLANDS NOT EVALUATED.</p>	<p>?</p>	<p>A. Delineation For any wetlands and other surface waters within the area of influence of the water use, the wetlands and other surface waters will be delineated pursuant to Rules Chapter 62-340.100 through 62-340.600, F.A.C., as ratified by Section 373.4211, F.S., are subject to this subsection, except as provided in the exclusions in B, below. In accordance with Subsection 62-340.300(1), F.A.C., reasonable scientific judgment shall be used to evaluate the existence and extent of a wetland or other surface water, including all reliable information, such as visual site inspection and aerial photo interpretation, in combination with ground truthing. In addition, relevant information submitted pursuant to Chapter 62-340, F.A.C, in support of an ERP/SWM Permit shall be considered. Field delineations of wetlands and other surface waters boundaries shall be required if such boundaries are in dispute.</p>

In determining the location and category of wetlands and other surface waters, the applicant may consult several sources of information for guidance, as part of the information identified in Subsection 3.3.2. This includes the staff reports of previously issued ERP and SWM Permits for the site and adjacent sites, NWI Maps, Land Use/Land Cover maps, NRCS soils maps, formal and informal wetland determinations conducted by the District, and wetland maps produced by local governments. District staff may inspect the site to confirm the location, categorization and delineation of wetlands and surface waters, and other site specific information. Site specific topographical data including elevations of hydrologic indicators, wetland boundary and bottom elevations shall be required in the event that the categorization of a wetland or other surface water is in question. In the event that access to offsite wetlands or other surface waters has been denied by the property owner, the District and the applicant shall mutually agree on a method of establishing the locations, categorizations and delineations of the offsite wetlands or other surface waters.

B. Exclusions
Harm to the following wetlands and other surface waters shall not require elimination or reduction of harm and mitigation, under this Section:

1. Isolated wetlands one half (1/2) acre or less in size unless:
 - a. The wetland or other surface water is used by threatened or endangered species; [Nothing herein is intended to relieve an applicant of the obligation to comply with the Florida Fish and Wildlife Conservation Commission (FWC) rules pertaining to listed species, and with the Federal Endangered Species Act.]
 - b. The wetland or other surface water is located in an area of critical state concern designated pursuant to Chapter 380, F.S.; or,
 - c. The wetland or other surface water is connected by standing or flowing surface water at seasonal high water level to one or more wetlands, where the combined wetland acreage is greater than one half acre.
2. Wetlands or other surface waters which have been authorized to be impacted to the extent established in a construction approval through an ERP or a SWM Permit issued under Part IV of Chapter 373, F.S.
3. Constructed water bodies including borrow pits, mining pits, canals, ditches, lakes, ponds, and water management systems, not part of a permitted wetland creation, preservation, restoration or enhancement program. However, consideration of the design functions of water management systems shall be considered by Section 3.6, Existing Offsite Land Uses.
4. Wetlands or other surface waters to the extent they have been specifically authorized to be impacted or mitigated pursuant to Subsections 3.3.5, 3.3.6, or 3.3.7 in a consumptive use permit, unless the applicant proposes additional impacts.

The District will not consider impacts to isolated wetlands less than 0.5 acres, unless:

- a. A wetland is used by endangered or threatened species designated in Rules 68A-27.003 and 68A-27.005, F.A.C. The District considers that a wetland is used by designated endangered or threatened species if reasonable scientific judgment indicates that the wetland provides a habitat function including, but not limited to, nesting, reproduction, food source, or cover for such species.
- b. A wetland is located in an area of critical state concern designated pursuant to Chapter 380, F.S.
- c. Two or more wetlands regardless of property boundaries have a combined area greater than 0.5 acre and are connected by standing or flowing surface water during average wet season high water levels. This connection can be established by water elevation indicators such as lichens, adventitious roots, water stains, soil profiles, aerial photos or other acceptable measures.

In determining the location and category of wetlands and other surface waters, the applicant may consult several sources of information for guidance, as part of the information identified in Subsection 3.3.2. This includes the staff reports of previously issued ERP and SWM Permits for the site and adjacent sites, NWI Maps, Land Use/Land Cover maps, NRCS soils maps, formal and informal wetland determinations conducted by the District, and wetland maps produced by local governments, other reliable sources of information. District staff may inspect the site to confirm the location, categorization and delineation of wetlands and surface waters, and other site specific information. Site specific topographical data including elevations of hydrologic indicators, wetland boundary and bottom elevations shall be required in the event that the categorization of a wetland or other surface water is in question. ~~In the event that access to offsite wetlands or other surface waters has been denied by the property owner, the District and the applicant shall mutually agree on a method of establishing the locations, categorizations and delineations of the offsite wetlands or other surface waters.~~

B. Exclusions
~~Harm to the following wetlands and other surface waters shall not require elimination or reduction of harm and mitigation, under this Section:~~

1. ~~For the purposes of this subparagraph 1. only, "isolated wetland" means any area that is determined to be a wetland in accordance with Chapter 62-340, F.A.C., but that does not have any connection via wetlands or other surface waters as determined using Rule 62-340.600, F.A.C. The District will not consider impacts to isolated wetlands one half (0.5) acre or less in size unless:~~
 - a. ~~The wetland is used by threatened or endangered species; For the purposes of this section only, threatened and endangered species means those species listed in Table 10.2.7-1, Listed Wildlife Species That Are Aquatic Or Wetland Dependent And That Use Upland Habitats For Nesting Or Denning, of the Environmental Resource Permit Applicant's Handbook, Volume 1, incorporated by reference in subsection 62-330.010(4), F.A.C. The District considers that a wetland is used by designated endangered or threatened species if reasonable scientific judgment indicates that the wetland provides a habitat function including, but not limited to, nesting, reproduction, food source, or cover for such species. [Nothing herein is intended to relieve an applicant of the obligation to comply with the Florida Fish and Wildlife Conservation Commission (FWC) rules pertaining to listed species, and with the Federal Endangered Species Act.]~~
 - b. ~~The wetland is located in an area of critical state concern designated pursuant to Chapter 380, F.S.; or,~~
 - c. ~~The wetland is connected by standing or flowing surface water at seasonal high water level to one or more wetlands, where and the combined wetland acreage so connected is greater than one half (0.5) acre. Wetland connection is determined by the delineation methods set forth in Chapter 62-340, F.A.C. This connection can be established by water elevation indicators such as lichens, adventitious roots, water stains, soil profiles, aerial photos or other acceptable measures.~~
 - d. ~~The wetland to be impacted is, or several such isolated wetlands to be impacted are, cumulatively, of more than minimal value to fish and wildlife.~~
2. ~~The District will not consider impacts to w~~Wetlands or other surface waters which have been authorized to be impacted to the extent established in a construction approval through an ERP or a SWM Permit issued under Part IV of Chapter 373, F.S. or exemption ~~listed or promulgated~~ under Part IV of Chapter 373, F.S. or Chapter 403, F.S.
3. ~~Constructed water bodies including borrow pits, mining pits, canals, ditches, lakes, ponds, and water management systems, not part of a permitted wetland creation, preservation, restoration or enhancement program. However, consideration of the design functions of water management systems shall be considered by Section 3.6, Existing Offsite Land Uses.~~
4. ~~The District will not consider impacts to W~~wetlands or other surface waters to the extent they have been specifically authorized to be impacted or mitigated pursuant to ~~Subsections 3.3.5, 3.3.6, or 3.3.7 in a separate~~ consumptive use permit, unless the applicant proposes additional impacts.

Commented [KPM3]: To be discussed further after hearing from the WRAT.

Commented [KPM4]: To be discussed further after hearing from the WRAT.

Commented [KPM5]: Request discussion on whether this is important for the CFWI or if it would be handled by the edits made to number 2., above.

CATEGORIZATION, PERFORMANCE STANDARDS

SFWMD	SFWMD	SJRWMD	Concepts for CFWI
<p>3.3.3 Categorization of Wetlands and Other Surface Waters Wetlands and other surface waters subject to consideration under this Subsection are grouped into three categories based on their normal hydrologic characteristics and their susceptibility to harm as a result of hydrologic alteration from water use withdrawals. Normal hydrologic characteristics are defined as the hydroperiod that would occur without the impact of any authorized or unauthorized water uses. In cases where existing surface water management “works” have permanently altered the normal hydrologic characteristics of the wetland or other surface water, the categorization shall be based on the resulting hydrology caused by the permanent alteration. Alterations that can effect wetland hydrology include canals, ditches, roads, structures or levees. The hydrologic characteristics resulting from construction or alterations undertaken in violation of Chapter 373, F.S., or District rule, order or permit, shall be evaluated based on historic, pre-violation conditions, as if the unauthorized hydrologic alteration had not occurred. Wetlands and other surface waters are subject to evaluation under this Section, in accordance with the following: Category 1: Natural lakes, deep ponds, rivers, streams, deepwater slough systems, coastal intertidal wetlands, and cypress strands that are permanently flooded throughout the year, except in cases of extreme drought. These include “permanently flooded” and “intermittently exposed” surface waters in the NWI maps. Category 2: Seasonally inundated wetlands including cypress domes, emergent marshes, cypress strands, mixed hardwood swamps, or shrub swamps and exhibit standing water conditions throughout most of the year. These include “semi-permanently flooded” or “seasonally flooded” wetlands in the NWI maps. Category 3: Temporarily flooded and saturated wetlands including wet prairies, and shallow emergent marshes, as well as seepage slopes, bayheads, hydric hammocks, and hydric flatwoods. These include “temporarily flooded” and “saturated” wetlands in the NWI maps. This subsection shall be applied on a case by case basis to categorize wetlands and other surface waters based on their normal hydrologic characteristics and susceptibility to harm as a result of hydrologic alterations from water use withdrawals. 3.3.4 “No Harm” Standards and Thresholds To demonstrate that no harm will occur to wetlands and other surface waters, reasonable assurances must be provided by the applicant that the narrative standard for Category 1, 2 and 3 wetlands and other surface waters in Subsection 3.3.4.A is met. For Category 2 wetlands, demonstration that the narrative standard is met shall be achieved through complying with the numeric threshold set forth in Subsection 3.3.4.B, unless such threshold is deemed by the District to be inapplicable due to the site specific considerations identified in Subsection 3.3.4.C. Site specific considerations may render the numeric threshold inapplicable. In these cases, the applicant shall demonstrate that harm as defined in the narrative standard in Subsection 3.3.4.A will not occur, notwithstanding the numeric threshold. The analysis for determining harm shall include an assessment of the projected hydrologic alterations caused by the water use and a cumulative assessment encompassing surface waters. In circumstances of cumulative contributions to harm, an applicant shall only be required to address its relative contribution of harm to the wetlands and other surface waters. In the evaluation of the applicant’s water use, the District shall consider the extent of hydrologic alterations to wetlands and other surface waters caused by the applicant’s water use based upon analytical or numerical modeling, or monitoring data, as required by Subsection 3.1.1 and this subsection. The determination of harm shall consider the temporary nature of water use drawdowns and seasonal application of certain water uses. Such consideration includes a determination of whether the hydrologic alteration is constant or if it recovers seasonally. A. Narrative Standard For Category 1, 2, and 3 wetlands and other surface waters, an applicant shall provide reasonable assurances that hydrologic alteration caused by the water use shall not adversely impact the values of wetland and other surface water functions so as to cause harm to the: 1. Abundance and diversity of fish, wildlife and listed species; and, 2. Habitat of fish, wildlife, and listed species. B. Numeric Thresholds for Category 2 Wetlands Unless site specific considerations identified pursuant to Subsection 3.3.4.C exist indicating the following numeric threshold for Category 2 wetlands is not applicable, the water use shall not be considered harmful when the modeled drawdown resulting from cumulative withdrawals in the unconfined aquifer beneath all portions of the wetland is less than 1.0 feet. Water use withdrawals shall be modeled based on a maximum monthly allocation simulated for 90 days without recharge and as otherwise directed under Subsection 3.1.2.</p>	<p>3.3.1.1.4 PERFORMANCE STANDARDS. a. Wet season water levels shall not deviate from their normal range. b. Wetland hydroperiods shall not deviate from their normal range and duration to the extent that wetlands plant species composition and community zonation are adversely impacted. c. Wetland habitat functions, such as providing cover, breeding, and feeding areas for obligate and facultative wetland animals shall be temporally and spatially maintained, and not adversely impacted as a result of withdrawals. d. Habitat for threatened or endangered species shall not be altered to the extent that utilization by those species is impaired. 3.3.1.2 LAKES PERFORMANCE STANDARDS. Water levels in lakes shall not deviate from the normal rate and range of fluctuation, to the extent that: a. Water quality, vegetation, or animal populations are adversely impacted; b. Flows to downgradient watercourses are adversely impacted; and/or c. Recreational use or aesthetic qualities of the water resource are adversely impacted. 3.3.1.3 STREAMS PERFORMANCE STANDARDS. a. Flow rates shall not deviate from the normal rate and range of fluctuation to the extent that water quality, vegetation, and animal populations are adversely impacted in streams and estuaries. b. Flow rates shall not be reduced from the existing level of flow to the extent that salinity distributions in tidal streams and estuaries are significantly altered as a result of withdrawals. c. Flow rates shall not deviate from the normal rate and range of fluctuation to the extent that recreational use or aesthetic qualities of the water resource are adversely impacted.</p>	<p>?</p>	<p>Concepts for CFWI <u>Categorization</u></p> <ul style="list-style-type: none"> • Categorization is on hold until we receive a response from the WRAT. At that time, upon seeing their response, we will consider whether we would like to include categories. <p><u>Numeric Threshold</u></p> <ul style="list-style-type: none"> • Numeric threshold is on hold until we receive a response from the WRAT. At that time, upon seeing their response, we will consider whether we would like to include numeric thresholds. <p><u>Narrative Standards</u></p> <ul style="list-style-type: none"> • Narrative standard would apply even if there is a threshold. • This subsection shall be applied on a case by case basis to wetlands and other surface waters based on their normal hydrologic characteristics and susceptibility to harm as a result of hydrologic alterations from water use withdrawals. • The analysis for determining harm in accordance with the below shall include an assessment of the projected hydrologic alterations caused by the water withdrawal and a cumulative assessment encompassing surface waters. In circumstances of cumulative contributions to harm, an applicant shall only be required to address its relative contribution of harm to the wetlands and other surface waters. <p><u>Wetlands</u></p> <ul style="list-style-type: none"> • Wetland hydroperiods and wet season water levels shall not deviate from their normal range and duration to the extent that wetlands plant species composition and community zonation are adversely impacted. • Wetland habitat functions for obligate and facultative wetland animals shall be temporally and spatially maintained, and not adversely impacted as a result of withdrawals. These functions include, but are not limited to, providing cover and refuge; breeding, nesting, denning, and nursery areas; corridors for wildlife movement; food chain support; and natural water storage, natural flow attenuation, and water quality improvement, which enhances fish, wildlife, and listed species utilization. • Habitat for threatened or endangered species shall not be altered to the extent that utilization by those species is impaired. For the purposes of this section only, threatened and endangered species means those species listed in Table 10.2.7-1, Listed Wildlife Species That Are Aquatic Or Wetland Dependent And That Use Upland Habitats For Nesting Or Denning, of the Environmental Resource Permit Applicant’s Handbook, Volume 1, incorporated by reference in subsection 62-330.010(4)(a), F.A.C. • Request for Reg Team to discuss whether work completed by the DMIT or EMT teams indicates that soils should be added here for the CFWI as an additional measure of harm. <p><u>Streams and rivers</u></p> <ul style="list-style-type: none"> • Flow rates shall not deviate from the normal rate and range of fluctuation to the extent that water quality, vegetation, and animal populations are adversely impacted in streams and estuaries. • Flow rates shall not deviate from the normal rate and range of fluctuation to the extent that downgradient watercourses are adversely impacted. <p><u>Lakes</u></p> <ul style="list-style-type: none"> • Water levels in lakes shall not deviate from the normal rate and range of fluctuation, to the extent that: <ul style="list-style-type: none"> o Water quality, vegetation, or animal populations are adversely impacted; and/or o Flows to downgradient watercourses are adversely impacted

If the applicant chooses to use an alternative simulation condition, the narrative standard in Subsection 3.3.4.A shall apply.

C. Site Specific Considerations

Site specific information shall be submitted by the applicant, if requested by the District or if otherwise deemed relevant by the applicant, for determining whether the narrative standard in Subsection 3.3.4.A is met, including whether the numeric threshold in Subsection 3.3.4.B is applicable. The applicant shall provide site specific information on the local hydrology, geology, actual water use or unique seasonality of water use, including, but not limited to:

1. Site specific hydrologic or geologic features that affect the projected drawdown shall be evaluated, including the existence of clay layers that impede the vertical movement of water under the wetland, preferential flow paths, seepage face wetlands that receive high rates of inflow, or the effects of soil depth and type on moisture retention, to the degree that actual field data support how these factors affect the potential for impacts of the water use on the wetland or other surface water.
2. If the applicant asserts that the actual water use has not caused harm to wetlands or other surface waters, site specific information on the condition of the wetlands or other surface waters in question must be provided in conjunction with pumpage records or other relevant evidence of actual water use to substantiate the assertion. Applicable monitoring data as described in Subsection 3.1.1 shall be submitted, if available.
3. Other relevant factors or information in assessing the potential for harm to wetlands and other surface waters, such as the condition, size, depth, uniqueness, location, and fish and wildlife utilization, including listed species, of the wetland or other surface water.

Springs

Please note: This is only a placeholder. DEP is initiating rulemaking on Outstanding Florida Springs per the water bill on November 1.

For initial discussions, NFWMD and SRWMD A.H. language is provided below as these districts are the only two to explicitly address springs. **The purple text below is intended to indicate language that is substantively different than the language you see above for other waterbodies. I highlight it only to spur discussion.**

The NFWMD A.H. has the following:

Factors to be considered in the assessment of harm to springs

- The potential for withdrawals to cause or contribute to a change in water levels or flows from the normal rate and range of fluctuation, to the extent that water quality, vegetation communities, or animal populations and their habitat are adversely impacted;
- The potential for withdrawals to cause or contribute to a change in water levels or flows from the normal rate and range of fluctuation, to the extent that flows to downgradient receiving watercourses are adversely impacted; and
- The potential for withdrawals to cause or contribute to a change in water levels or flows from the normal rate and range of fluctuation, to the extent that recreational use of the springs is adversely impacted.

The SRWMD A.H. has the following:

- Withdrawals must not cause a change in water levels or flows from the normal rate and range of fluctuation, to the extent that:
 - o Water quality, vegetation, or animal populations and their habitat are adversely impacted;
 - o Flows to downgradient watercourses are adversely impacted;
 - o Recreational use or aesthetic qualities of the water resource are adversely impacted;
 - o Frequency and/or duration of surface water flow back into the spring exceeds historical conditions.

Evaluation of Narrative Standards (Site-Specific Considerations)

Site specific information shall be submitted by the applicant, if requested by the District or if otherwise deemed relevant by the applicant, for determining whether the narrative standard has been met [additional language on numeric standard may be included pending response from WRAT and discussion at Reg Team]. The applicant shall provide site specific information on the local hydrology, geology, actual water use or unique seasonality of water use, including, but not limited to:

1. Site specific hydrologic or geologic features that affect the projected drawdown shall be evaluated, including the existence of clay layers that impede the vertical movement of water under the wetland, preferential flow paths, seepage face wetlands that receive high rates of inflow, or the effects of soil depth and type on moisture retention, to the degree that actual field data support how these factors affect the potential for impacts of the water use on the wetland or other surface water.
2. If the applicant asserts that the actual water use has not caused harm to wetlands or other surface waters, site specific information on the condition of the wetlands or other surface waters in question must be provided in conjunction with pumpage records or other relevant evidence of actual water use to substantiate the assertion. Applicable monitoring data as described in Subsection 3.1.1 shall be submitted, if available.
3. Other relevant factors or information in assessing the potential for harm to wetlands and other surface waters, such as the condition, size, depth, uniqueness, location, and fish and wildlife utilization, including listed species, of the wetland or other surface water.

DRAFT

