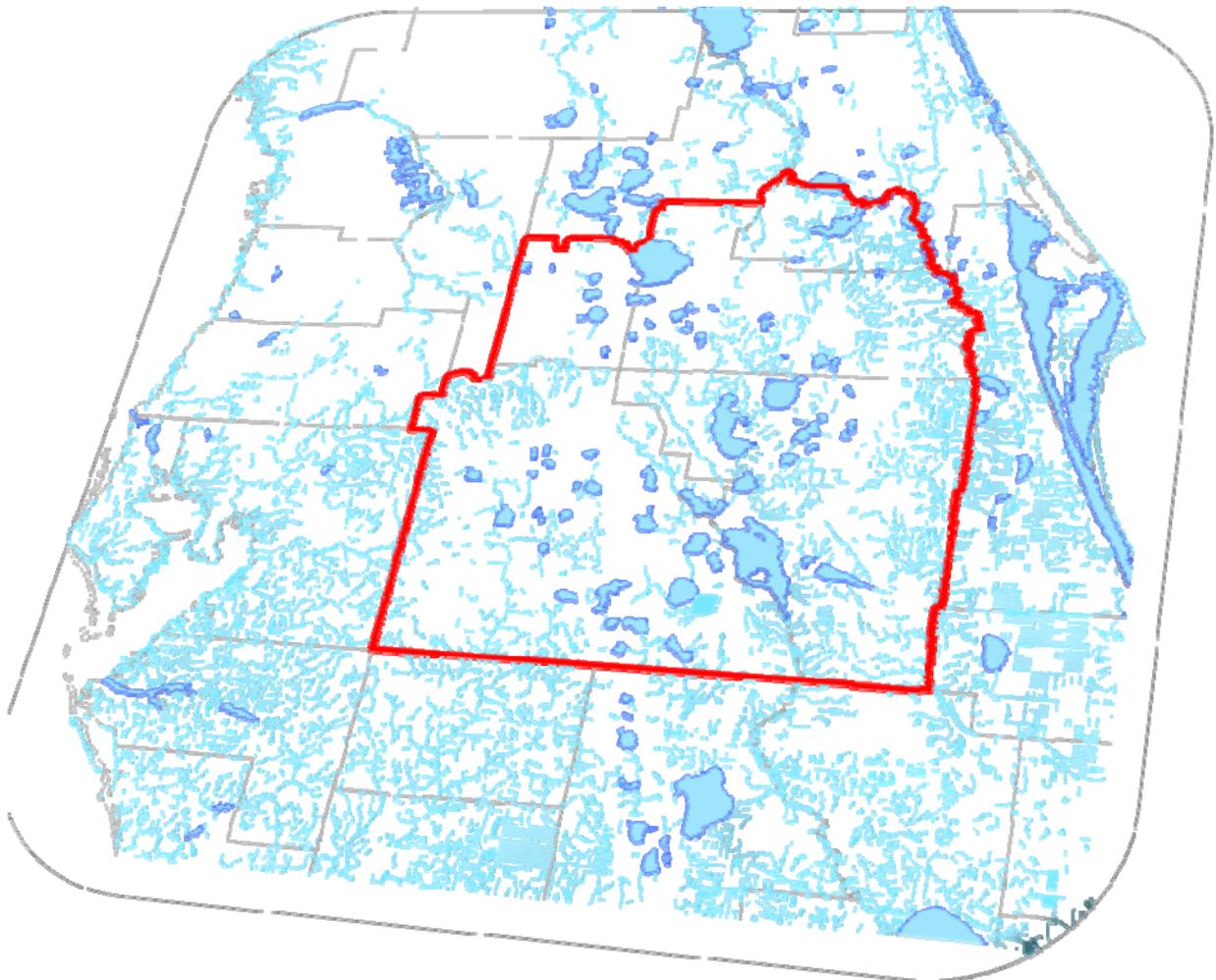


# Processes Used by the South Florida, St. Johns River, and Southwest Florida Water Management Districts for Developing Priority Lists for Minimum Flows and Levels and Reservations



Central Florida Water Initiative  
Minimum Flows and Levels and Reservations Team

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# CHAPTER 1

## INTRODUCTION

As part of the Central Florida Water Initiative (CFWI), the Minimum Flows and Levels and Reservations Team (MFLRT) has been tasked with documenting the processes currently used by the St. Johns River Water Management District (SJRWMD), Southwest Florida Water Management District (SWFWMD) and South Florida Water Management District (SFWMD) to develop their priority lists and schedules for establishment of Minimum Flows and Levels (MFLs) and reservations. To complete this task, the MFLRT reviewed the statute/rule requirements, technical considerations, and processes associated with development of the priority lists and schedules. Results from the review are summarized in this document and opportunities for stakeholder input are identified in the processes used by each district.

## STATUTORY AND RULE REQUIREMENTS FOR MFLS AND RESERVATIONS PRIORITY LISTS

Each year Florida's water management districts ("Districts") are required, pursuant to Section 373.042(2), Florida Statutes (F.S.), (see **Appendix A** for the statutory language) to submit to the Florida Department of Environmental Protection ("Department") for review and approval a priority list and schedule (herein after referred to as "priority list") for the establishment of MFLs for water bodies and reservations within each respective district. When developing the priority list, the statute requires that the list be based upon:

- a. "the importance of the waters to the state or region, and
- b. the existence of or the potential for significant harm to the water resources or ecology of the state or region, and shall include
- c. waters which are experiencing or may reasonably be expected to experience adverse impacts."

Additionally, priority lists are required to include all first magnitude springs and all second magnitude springs within state or federally owned lands purchased for conservation purposes. Second magnitude springs may be excluded from the lists if the water management district submits a report to the Department demonstrating that adverse impacts are not now occurring nor are reasonably expected to occur from consumptive uses during the next 20 years.

The districts are also required to identify on the priority list *"those water bodies for which the district will voluntarily undertake independent scientific peer review (s. 373.042(2), F.S.)*.

Generally, voluntary peer review of the methods used for the establishment of MFLs and reservations is conducted on an individual basis. However, since the SWFWMD has developed uniform methodologies for lake and wetland MFLs that were peer reviewed, any subsequent development of MFLs for these types of systems will not be peer reviewed or identified for peer review on the priority list.

Through the CFWI process, the MFLRT developed a standard process for consistent peer review of proposed MFLs and Water Reservations (reservations) by the SJRWMD, SWFWMD and SFWMD in the CFWI area. The *Standard Peer Review Process within the Central Florida Water Initiative Area for MFLs and Water Reservations* (June 20, 2012), outlines the procedure to follow when conducting peer review in the CFWI. Based on this document, the Department amended Rules 62-40.473(10) and 62-40.474(4) F.A.C. of the Water Resource Implementation Rule, to provide guidance for determining whether to conduct voluntary peer review. Factors incorporated into the rule include:

- a. Whether or not the MFLs and reservations are based on a previously peer-reviewed methodology;
- b. The level of complexity of the MFLs and reservations;
- c. Whether or not the water body for which the MFLs and reservations are being developed includes water resource characteristics that are substantially different than previously peer reviewed minimum flows or levels; and
- d. The degree of public concern regarding the MFLs and reservations.

The priority lists are submitted annually by November 15<sup>th</sup> to the Department for review and approval. Pursuant to Section 373.036(7), F.S., by March 1st of each year each water management district includes its approved priority list in the consolidated annual report.

Additional guidance regarding the development of the annual priority list is also found in Rules 62-40.473(9) and 62-40.474(5), F. A. C., of the Water Resource Implementation Rule (see **Appendix A**). These rules require that the submitted list identify:

- a. MFLs planned for establishment in the next three years,
- b. The basis for a decision regarding whether to conduct voluntary scientific peer review,
- c. Water bodies on the list which may be affected by withdrawals occurring in other Districts, and
- d. Water bodies for which a reservation is proposed and whether the reservation is proposed for the protection of fish and wildlife or public health and safety

## **CHAPTER 2**

### **PRIORITY LIST CONSIDERATIONS**

Based on 373.042(2), F.S., the priority list shall be based upon the importance of the waters to the state or region and the existence of or potential for significant harm to the water resources or ecology of the state or region, and shall include those waters which are experiencing or may reasonably be expected to experience adverse impacts. Key considerations in developing priority lists include: the existence or reasonable potential for adverse impacts associated with water use; areas of planned future water withdrawals; requests for or renewal of specific water-use permits; the geographic distribution of water bodies to promote resource protection on a regional basis; inclusion of segments of major flowing water bodies within the District; inclusion of all first and second magnitude springs; budgetary concerns; and staff resource limitations (Hancock et al., 2010). Policy, technical, and other considerations must be taken into account when determining the priority list of lakes, wetlands, aquifers and surface watercourses for MFLs and reservations development. Many of these considerations are dependent on or affected by one another.

#### **POLICY CONSIDERATIONS**

Pursuant to Section 373.0421(1)(a), F.S. the Department or the District Governing Boards “shall consider changes and structural alterations to watersheds, surface waters and aquifers, and the effects of such changes or alterations have had, and the constraints such changes or alterations have placed, on the hydrology of an affected watershed, surface water, or aquifer.” In addition, the Florida Legislature (373.0421(1)(b)1, F.S.) “recognizes that certain water bodies no longer serve their historical hydrological functions” and that “recovery of these water bodies to historical hydrologic conditions may not be economically or technically feasible, and that such recovery effort could cause adverse environmental or hydrologic impacts. Accordingly, the department or governing board may determine that setting a minimum flow or level for such a water body based on its historical condition is not appropriate.” This provision does not preclude the Governing Boards from adopting MFLs for a water body that has been hydrologically altered, but rather allows for discretion to be used. The provision may also help the Governing Boards determine which water bodies should have a higher priority for MFL establishment. For example, a Governing Board may give higher priority to a water body that has a more

natural hydrologic condition as compared to a system that has been altered by factors other than consumptive uses.

State law also specifically identifies certain water bodies for which the Governing Board is not required to establish MFLs (Section 373.0421(1)(b) 2 and 3, F.S.). The types of water bodies that may be excluded from MFLs development include:

- a. "surface water bodies less than 25 acres in area, unless the water body or bodies, individually or cumulatively, have significant economic, environmental, or hydrologic value."
- b. "surface water bodies constructed prior to the requirement for a permit, or pursuant to an exemption, a permit, or a reclamation plan which regulates the size, depth, or function of the surface water body under the provisions of this chapter, chapter 378, or chapter 403, unless the constructed surface water body is of significant hydrologic value or is an essential element of the water resources of the area."

The determination of whether a water body meets the criteria of any of these exclusions may or may not be known prior to the water body's placement on the priority list, but may be determined at some point during the analysis.

The state legislature may direct that MFLs be established for specific water bodies and may identify specific time frames for adopting those MFLs. Statutory provisions have directed some of the following district priorities:

1. Section 373.042(3), F.S. directed the SWFWMD to establish MFLs for priority waters in Hillsborough, Pasco, and Pinellas counties by October 1, 1997;
2. Section 369.318(7), F.S. directed the SJRWMD to update, by December 2007, the MFLs standards for Rock Springs and Wekiva Springs; and
3. Section 373.042 (2), F.S., directed all the water management districts to include all first magnitude and certain second magnitude springs on their priority lists.

Policy considerations also factor into decisions regarding the prioritization of reservations. These considerations are discussed in a separate section below.

## **TECHNICAL CONSIDERATIONS**

The technical considerations described below are consistently used by the SJRWMD, SWFWMD and SFWMD, however, the number of technical considerations may vary

depending on the site specific or unique characteristics of the water body being evaluated for priority listing.

## **1. EXISTING AND FUTURE CONSUMPTIVE USE WITHDRAWALS**

While several other factors must also be considered, the existence of current or future withdrawals in the area of a water body is key consideration for prioritization. Because the intent of MFLs is to help prevent significant harm from withdrawals, a water body's need for MFLs establishment is low if there are no current or planned surface or groundwater withdrawals in the area, even if it has been determined that a water body would be susceptible to withdrawals.

Surface or groundwater withdrawals that are expected over the next 20 years are important considerations in the evaluation process. In the development of regional water supply plans, District staff have identified water bodies, through published reports and planning-level hydrologic model evaluations, that are currently or are likely to experience adverse impacts from consumptive use withdrawals.

When evaluating the effect of existing and future withdrawals on water bodies, regional and localized modeling tools are used by the SJRWMD, SWFWMD and SFWMD to determine the location, timing and magnitude of drawdown on the resource(s). In some instances the boundaries of regional models may extend across water management district boundaries.

Different water bodies have varying levels of susceptibility to drawdown in underlying aquifers. The amount of hydrologic impact experienced by a water body for a given amount of drawdown depends on several factors, including:

- Hydrological connections with other water bodies
- Integrity of regional confining units
- Confining properties directly beneath the water body
- Presence of operable or fixed structures
- Depth and size of the water body

While many factors affecting a water body's susceptibility to withdrawals (such as size, existence of structures, degree of isolation, etc.) can be identified through observations during site visits or inspection of aerial photography and other information, the amount of hydrologic and hydrogeologic information available for individual water bodies often differs substantially. In areas where there is a high density of monitor wells, characteristics of regional confinement may be well known. Similarly, information on local confinement properties may be available for water bodies included in hydrologic studies that have included intensive data collection efforts. In the absence of such studies, local

investigations may be needed before susceptibility may be assessed. The time and budget needed to collect this information may affect the prioritization of water bodies for development of MFLs or reservations.

## **2. HYDROLOGIC CONDITIONS OF POTENTIAL PRIORITY WATER BODIES**

If a water body that has been experiencing chronic low water levels or flows is in an area of documented poor confinement and significant withdrawals, it is likely a candidate for higher priority. The degree of decline in water level or flow (potentially due to withdrawals) would also be a factor in priority ranking.

The likelihood that a water body can be restored may also be a consideration for its placement on a priority water body list. A water body susceptible to withdrawals may rank lower on the priority list if it is known to be significantly affected by historic drainage. In such situations, recovery may be less likely to be successful without significant drainage alterations.

If a water body's current condition has previously been evaluated, the water body may be specifically identified in the District's Regional Water Supply Plan. Such a designation would likely contribute to increased prioritization for the water body.

## **3. REGIONAL AND STATE-LEVEL SIGNIFICANCE**

A water body considered for priority listing shall be based on the importance of water to the state or region. Typically, water bodies of regional or state significance are large riverine, wetland or lake systems with unique habitats that are associated with conservation areas such as state or federal parks or have a special designation such as "Wild and Scenic River," (e.g., Wekiva River in Orange and Seminole Counties). Springs or aquifers may also be considered of regional or state-level importance. These regionally or state-level significant water bodies typically provide multiple benefits, including flood control, navigation, recreation, water supply, and natural environmental attributes.

## **4. ECOLOGICAL SIGNIFICANCE**

The significant regional ecologic importance of large systems such as the Wekiva River basin and the Green Swamp (Lake and Polk Counties) are well-established. Although such systems may be ranked higher or lower depending on their current condition and/or susceptibility, their high ecologic value is an important consideration in MFLs priority ranking. Ecological significance is also typically considered when prioritizing a water body for development of reservations for the protection of fish and wildlife.

Other smaller systems may have high ecologic significance due to special features associated with the water body, such as long-established rookeries, or documented habitat for federally or state listed species. If a water body with such features is determined to be susceptible to withdrawals, the features may be a reason for higher priority.

Water bodies designated as Outstanding Florida Waters (OFWs) may also get consideration for higher priority ranking in when they are determined to be susceptible to withdrawals. Outstanding Florida Waters are designated by the Department under authority of Section 403.061 (27), F. S. as worthy of special protection because of their natural attributes.

## **5. RECREATIONAL SIGNIFICANCE**

A secondary consideration for prioritization often includes issues associated with the protection of recreational attributes such as navigation, boating, and fishing. For example, the Wekiva River received high prioritization for MFLs development based in part on its high recreational use. Existing public recreational access within a particular water body may also contribute to higher prioritization.

## **6. ACCESS**

The establishment of MFLs or reservation for a water body almost always requires multiple site visits for topographic surveying, ecologic assessment and other data collection efforts. However, many water bodies are surrounded by private property, and this private land ownership sometimes makes site access difficult. Even gaining access to water bodies with public access may require substantial coordination with the specific public agency that controls the access. While large flowing systems usually have public access somewhere along the system, critical areas needed to assess ecologic functions may be privately owned. Although the SJRWMD, SWFWMD and SFWMD have had success working with private and public land owners for initial data collection supporting MFLs or reservation development, obtaining long-term easements for on-going data collection and maintenance of an established MFLs or reservations site can be problematic and time consuming.

Because the establishment and maintenance of an MFLs or reservations site typically requires long-term access for data collection, equipment maintenance, etc., some type of legal agreement for long-term access is desirable. The form of such agreements can be determined on a case-by-case basis, depending on the specific need for access, as well as the needs of private or public owners, but long-term access should always be established. Although access agreements are often more readily established with public entities, many public agencies have specific egress/ingress requirements and limitations due to land management obligations, public safety, and other factors. Sign-off requirements for some

large agencies (such as some federal agencies) may take well over a year to be finalized. Private agreements may not be possible at all, or may require funding to purchase a permanent easement. If available, condemnation may be considered, although this process often has significant time requirements. Regardless of the situation, the ability to obtain legal access is an important consideration for the MFLs and reservations priority process.

## **7. DATA AVAILABILITY**

A combination of ecologic and hydrologic data (e.g., water level and/or flow data) is essential for establishing MFLs and reservations. The more hydrologic data available for a candidate water body and the richness of the understanding of the relationship between hydrology and ecologic or environmental values, the better the integrity of the established MFLs or reservations, and the better the ability to determine compliance with the MFLs/reservations.

Some ecologic and/or hydrologic data can be collected in a relatively short time, but if a long-term time series of data is required, MFLs or reservations establishment may need to be deferred. However, MFLs or reservations may be set for some high priority water bodies with limited data sets, based on the best available information. These MFLs or reservations may be scheduled for reevaluation years later to allow for acquisition of additional data.

Water bodies with long-term data and high quality data may receive higher prioritization over water bodies with short-term or lower quality data.

## **8. GEOGRAPHIC DISTRIBUTION**

As a water body is being considered for prioritization, consideration is given to the water body's proximity to other water bodies with adopted MFLs. When two water bodies with similar attributes (as defined in 1-7 above) are being considered for MFL adoption, prioritization is often given to the water body located more distant from water bodies with previously adopted MFLs to provide better coverage of water resource protection.

## **9. REEVALUATIONS OF MFLS AND RESERVATIONS**

Section 373.0421, F.S. requires that MFLs be *reevaluated periodically and revised as needed*. Similarly, Section 373.223(4), F.S. dictates that reservation *shall be subject to periodic review and revision in the light of changed conditions*. Existing MFLs and reservations are reevaluated and periodically revised if necessary based on new information collected through research or monitoring data. As this new information becomes available, additional water bodies may be added to the priority list.

Changing water resource conditions or constraints may result in changes to the hydrologic regime of the MFLs or reservations water body. Some examples of changed conditions and may include, but not be limited to, the following:

- a.* New restoration projects
- b.* Changes in operations
- c.* Surrounding land use
- d.* Surrounding drainage patterns
- e.* Presence of new water control structures
- f.* Increases in withdrawals from consumptive use

For example, MFLs established for Sylvan Lake (Seminole County) are being reevaluated because of changes in surrounding land use.

## **10. TIMING OF OTHER PROJECTS ASSOCIATED WITH A WATER BODY**

Another consideration is the timing of restoration or water resource development and water supply development projects that may be associated with the water body being evaluated. The timing and location of projects that might directly affect the hydrology of a priority water body are considered in the priority listing to reduce or eliminate the possibility of conducting a reevaluation of MFLs or reservations immediately after rule adoption.

For example, MFLs for Lake Hancock (Polk County) which contributes flow to the Peace River, are needed as part of a specific recovery plan for the river. Once the MFLs are established, they will serve as part of the operating guidelines for the lake's structure, as well as for nearby treatment facilities that will be constructed to improve the water quality of the river.

## **11. OTHER REGULATORY RESTRICTIONS**

When considering which water bodies need protection from additional withdrawals, the existing level of protection already afforded to the water body is evaluated to see if additional protection is warranted. If there are sufficient protective measures already in place through other water resource protection tools, such as a water reservation, adopted MFLs on adjacent water bodies, special basin criteria, etc., then these existing rules are taken into consideration as part of the prioritization process.

## **OTHER CONSIDERATIONS**

### **1. STAKEHOLDER INPUT**

In some instances a water body has been added to the priority list or given additional consideration based on concerns expressed to district staff or the Governing Board by members of the public, an advocacy group or other stakeholders who have specific concerns about a particular water body.

### **2. FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION REVIEW**

The Department's review may result in the inclusion of new water bodies on the priority list or modification of the existing schedules for water bodies on the priority list.

### **3. BUDGET AND RESOURCE CONSTRAINTS**

Budgetary and resource limitations are important considerations when developing a priority list. Typically priority lists include scheduling for a three-year period and include those water bodies that are targeted for adoption based on the policy, technical and other considerations described above. Evaluation of budget constraints and limited internal resources contributes to the realistic assessment of appropriate prioritization and scheduling for MFLs establishment. The recommended priority list presented to each District's Governing Board may be adjusted based on what can be accomplished within the time frame identified.

## **ADDITIONAL CONSIDERATIONS FOR WATER RESERVATIONS**

A water reservation is a legal mechanism to set aside water from consumptive use for the protection of fish and wildlife or public health and safety. When practical, reservations clearly describe the location, quantity, timing and distribution of the water reserved. While no reservations have been adopted for the CFWI area, reservations are planned for the Kissimmee Basin (Highlands, Osceola, Polk and Okeechobee Counties) and Lake Hancock (Polk County).

The decision to list a water body for adoption of a reservation is done on a case-by-case basis and is dependent upon several factors affecting the water body. As noted in the previous section of this document, many of the considerations associated with MFLs prioritization are relevant to the prioritization of reservations. The appropriate water resource protection tool used for any particular water body depends on the objectives of

the regulating agency and the existing condition of the water body being evaluated. Listed below are several considerations that are typically taken into account when deciding to add a reservation water body to a priority list.

## **PROTECTION OF FISH AND WILDLIFE**

A reservation is another water resource protection tool used to set aside water for the protection of fish and wildlife from consumptive water use. The Water Resources Implementation Rule (Florida Administrative Code 62-40.474 (1)(a) identifies several uses of water reservations for protection of fish and wildlife, including: aiding in a MFL recovery and prevention strategy; aiding in the restoration of natural systems to protect habitat; protecting flows or levels before harm occurs; protecting fish and wildlife within an OFW, Aquatic Preserve, state park or other publically owned conservation area that has significant ecological value; or preventing withdrawals in any other circumstances required to protect fish and wildlife.

In the SFWMD, prioritization of reservations for protection of fish and wildlife is driven by federal requirements of the Comprehensive Everglades Restoration Plan and the Kissimmee River Restoration program. Regionally significant restoration projects like the Kissimmee River Restoration project may require reservation of specified volumes or flows from future withdrawals to support natural system targets and where there has been a significant public investment in restoring natural systems (e.g., Kissimmee River).

Water reservations that are used for protection of fish and wildlife as part of an MFLs recovery or prevention strategy may be designed to protect a source of water from consumptive use to ensure that this water is available to the MFLs water body with a recovery or prevention strategy. In the CFWI area, the SWFWMD anticipates reserving water in the Southern Water Use Caution Area (SWUCA) to recover and protect established minimum flows and levels. The SWUCA includes the 5,100 square mile southern portion of the SWFWMD and is an area where depressed aquifer levels have caused salt water to intrude into the Upper Floridan aquifer along the coast and contributed to reduced flows in the upper Peace River and lowered lake levels in portions of Polk and Highlands counties. The SWUCA reservation rule, developed as part of the SWUCA Recovery Strategy, indicates that future reservations in the SWUCA will be adopted on a case-by-case basis, to address water that is developed through water resource development projects designed to recovery and maintain adopted minimum flows and levels in the area.

## **PROTECTION OF PUBLIC HEALTH AND SAFETY**

Rule 62-40.474 (1b), F.A.C. identifies several uses of water reservations for protection of public health and safety, including preventing sinkhole formation; preventing or decreasing saltwater intrusion; preventing the movement or withdrawal of groundwater pollutants, or preventing withdrawals in any other circumstance required to protect public health and safety. To date, no reservations have been adopted by the SJRWMD, SWFWMD or SFWMD for the protection of public health and safety.

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# CHAPTER 3

## PRIORITY LIST APPROVAL PROCESS

The Water Resources Implementation Rule specifies that the priority list and schedule must, at a minimum, include MFLs and reservations planned for establishment in the next three years. In many cases, the water management districts have extended this time frame to five or more years. Inclusion of these additional years has enabled staff to begin research and data collection earlier in the process for those water bodies that require a greater planning and budgeting horizon, and ensures that unforeseeable hydrologic events, which may hinder data collection, are less of an obstacle.

The priority list approval process involves input from various sources including departments and management staff within each District, public and private stakeholders and the Department. Ultimately, the Governing Board of each water management district authorizes submittal of the priority list to the Department, and each water management district submits the priority list to the Department by November 15 of each year for final review and approval.

### 1. WATER MANAGEMENT DISTRICT APPROVAL PROCESSES

#### Development and Approval of the Priority List

Each year a priority list is developed through an informal process that involves a series of District-internal coordination meetings with different departments including science, regulatory, resource management and planning staff. Based on the considerations described in Chapter 2 and internal coordination or recommendations, staff from SJRWMD, SWFWMD and SFWMD develop a recommended priority list for consideration by their respective Governing Board.

The SWFWMD presents a draft recommended priority list at their September Governing Board meeting as a “submit and file report” on the Governing Board agenda. This presentation is for information purposes, prior to seeking public input on the recommended list. A public input workshop is subsequently held in late September or early October. If appropriate, public input provided prior to, during or after the workshop is used to develop a revised draft priority list that is presented along with any public comment as a consent item at the October Governing Board meeting. Following Board approval, the priority list is submitted to the Department prior to November 15<sup>th</sup>.

The SFWMD typically presents recommended priority list at the September Water Resources Advisory Committee (WRAC) meeting to seek stakeholder input. Stakeholder input can occur on or before the WRAC meeting. Additionally stakeholder input can occur during the time period between WRAC and the Governing Board meeting. Any proposed revisions to the recommended priority list by WRAC members or stakeholders would be considered before the October or November Governing Board meeting. Stakeholders also have another opportunity for public input at the Governing Board meeting. The recommended priority list is placed on the Governing Board agenda as a discussion item. The Governing Board Resolution and approval from the Governing Board to submit the priority list to the Department occurs prior to November 15<sup>th</sup>.

The SJRWMD uses a detailed screening and selection process for developing their initial staff-recommended priority list. The process involves specific criteria that are used to score, rank and select individual water bodies within various regions of their district (Dunn *et al.*, 2006). Once a recommended priority list is developed, SJRWMD presents the draft recommended priority list as a consent item at the October or November Governing Board meeting prior to sending the priority list to the Department by November 15<sup>th</sup>.

## **2. FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION APPROVAL**

When the Department receives the priority lists from the districts, the lists are reviewed and then specific guidance and direction may be given to the districts. Once the Department has finalized its review, final approval is transmitted to each district via letter.

## **3. INCORPORATION OF PRIORITY LIST INTO THE CONSOLIDATED ANNUAL REPORT**

After receiving priority list approval from the Department, all three districts incorporate the priority list into their consolidated annual report on the management of their water resources that is required by Section 373.036(7), F.S., otherwise known as the “consolidated annual report.” This action fulfills the statutory requirement outlined in Section 373.042(2), F. S.

## **REFERENCES**

Hancock, M.C., Leeper, D.A., Barcelo, M.D., and Kelly, M. 2010. Minimum flows and levels development, compliance, and reporting in the Southwest Florida Water Management District. Southwest Florida Water Management District, Brooksville, Florida

Dunn, W., R. Wycoff, R. Epting, and S. Hall. 2006. Minimum Flows and Levels Candidate Site Selections and Prioritization Processes for East-Central Florida. Special Publication SJ2006-SP16, St. Johns River Water Management District, Palatka, FL.

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## APPENDIX A

### Statutes and Rules Pertaining to the Priority List for Minimum Flows and Levels and Reservations

#### Title XXVIII-Natural Resources; Conservation, Reclamation, and Use

#### Chapter 373, Florida Statutes - Part 1: Water Resources

#### 373.042 Minimum Flows and Levels.

(2) By November 15, 1997, and annually thereafter, each water management district shall submit to the department for review and approval a priority list and schedule for the establishment of minimum flows and levels for surface watercourses, aquifers, and surface waters within the district. The priority list and schedule shall identify those listed water bodies for which the district will voluntarily undertake independent scientific peer review; any reservations proposed by the district to be established pursuant to s. 373.223(4); and those listed water bodies that have the potential to be affected by withdrawals in an adjacent district for which the department's adoption of a reservation pursuant to s. 373.223(4) or a minimum flow or level pursuant to subsection (1) may be appropriate. By March 1, 2006, and annually thereafter, each water management district shall include its approved priority list and schedule in the consolidated annual report required by s. 373.036(7). The priority list shall be based upon the importance of the waters to the state or region and the existence of or potential for significant harm to the water resources or ecology of the state or region, and shall include those waters which are experiencing or may reasonably be expected to experience adverse impacts. Each water management district's priority list and schedule shall include all first magnitude springs, and all second magnitude springs within state or federally owned lands purchased for conservation purposes. The specific schedule for establishment of spring minimum flows and levels shall be commensurate with the existing or potential threat to spring flow from consumptive uses. Springs within the Suwannee River Water Management District, or second magnitude springs in other areas of the state, need not be included on the priority list if the water management district submits a report to the Department of Environmental Protection demonstrating that adverse impacts are not now occurring nor are reasonably expected to occur from consumptive uses during the next 20 years. The priority list and schedule is not subject to any proceeding pursuant to chapter 120. Except as provided in subsection (3), the development of a priority list and compliance with the schedule for the establishment of minimum flows and levels pursuant to this subsection satisfies the requirements of subsection (1).

### **373.0421 Establishment and implementation of minimum flows and levels.**

(1) ESTABLISHMENT.—

(a) Considerations.—When establishing minimum flows and levels pursuant to s. 373.042, the department or governing board shall consider changes and structural alterations to watersheds, surface waters, and aquifers and the effects such changes or alterations have had, and the constraints such changes or alterations have placed, on the hydrology of an affected watershed, surface water, or aquifer, provided that nothing in this paragraph shall allow significant harm as provided by s. 373.042(1) caused by withdrawals.

(b) Exclusions.—

1. The Legislature recognizes that certain water bodies no longer serve their historical hydrologic functions. The Legislature also recognizes that recovery of these water bodies to historical hydrologic conditions may not be economically or technically feasible, and that such recovery effort could cause adverse environmental or hydrologic impacts. Accordingly, the department or governing board may determine that setting a minimum flow or level for such a water body based on its historical condition is not appropriate.

2. The department or the governing board is not required to establish minimum flows or levels pursuant to s. 373.042 for surface water bodies less than 25 acres in area, unless the water body or bodies, individually or cumulatively, have significant economic, environmental, or hydrologic value.

3. The department or the governing board shall not set minimum flows or levels pursuant to s. 373.042 for surface water bodies constructed prior to the requirement for a permit, or pursuant to an exemption, a permit, or a reclamation plan which regulates the size, depth, or function of the surface water body under the provisions of this chapter, chapter 378, or chapter 403, unless the constructed surface water body is of significant hydrologic value or is an essential element of the water resources of the area.

The exclusions of this paragraph shall not apply to the Everglades Protection Area, as defined in s. 373.4592(2)(i).

**Title XXVIII-Natural Resources; Conservation, Reclamation, and Use**  
**Chapter 373, Florida Statutes - Part II: Permitting of Consumptive Uses of Water**  
**373.223 Conditions for a Permit.**

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

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## **62-40, FLORIDA ADMINISTRATIVE CODE – WATER RESOURCE IMPLEMENTATION RULE**

### **62-40.473 Minimum Flows and Levels.**

(9) A minimum flow and level priority list and schedule, meeting the requirements of Section 373.042(2), F.S. shall be submitted to the Department annually. At a minimum, the schedule shall include the minimum flows and levels planned for establishment in the next three years. The priority list shall also identify whether or not voluntary scientific peer review will be undertaken for those water bodies and the basis for the decision. The District shall identify any water bodies included on the list which may be affected by withdrawals occurring in other Districts.

### **62-40.474 Reservations.**

(5) During the annual development and submittal of the minimum flow and level priority list, required by Section 373.042, F.S., the District shall identify any water bodies for which a reservation of water is proposed under Section 373.223(4), F.S., and whether the reservation is proposed for the protection of fish and wildlife or the public health and safety.