

SUMMARY TABLE: PUBLIC INTEREST STATUTES

Regulatory Context	Overall Water Supply Management Context	Miscellaneous
Section 373.019(16), F.S. (Definition of “R-B use”)	Section 373.016, F.S. (Water resource policies)	Section 373.026(9)(b), F.S. (DEP seeking federal funding)
Section 373.223, F.S. (CUP “3 prong test”)	Section 373.036, F.S. (District water management plan)	Section 373.046, F.S. (Interagency agreements)
Section 373.2234, F.S. (Preferred sources)	Section 373.0363, F.S. (SWUCA recovery strategy)	Sections 373.175 and 373.246 F.S. (Water Shortage)
Section 373.227, F.S. (Water Conservation)	Section 373.1501, F.S. (Local sponsor and CERP)	Section 373.185, F.S. (FL Friendly Landscaping)
Section 373.228, F.S. (Landscape irrigation design)	Section 373.171, F.S. (Rulemaking authorization)	Section 373.250, F.S. (Reuse of reclaimed water)
Section 373.2295, F.S. (Interdistrict transfers of groundwater)	Section 373.701, F.S. (Declaration of policy)	Section 373.713, F.S. (Regional water supply authorities)
Section 373.233, F.S. (Competing applications)	Section 373.705, F.S. (Water Resource Development and Water Supply Development)	
	Section 373.707, F.S. (Alternative water supply development)	
	Section 373.709, F.S. (Regional water supply planning)	

**EXCERPTS RE: PUBLIC INTEREST FOR
CONSUMPTIVE USE PERMITTING AND WATER SUPPLY MANAGEMENT**

Statutory References and Authority

- **Section 373.016, F.S. (Water resource policies)**
 - Declares the legislative policy on the state's water resources and sets forth the purposes of Chapter 373, F.S.
- **Section 373.019(16), F.S. (Definition of "R-B use")**
 - Defines "reasonable-beneficial use" as "the use of water in such quantity as is necessary for economic and efficient utilization **for a purpose and in a manner which is both reasonable and consistent with the public interest.**"
- **Section 373.026(9)(b), F.S. (DEP seeking federal funding)**
 - Provides a "public interest" criterion for the Department of Environmental Protection (DEP) to select projects in the state's program of public works for which the state seeks federal funding.
- **Section 373.036, F.S. (District water management plan)**
 - (2) In the formulation of the district water management plan, the Board shall consider:
 - attainment of maximum reasonable-beneficial use of water resources
 - maximum economic development of such resources consistent with other uses
 - management of water resources for such purposes as environmental protection, drainage, flood control, and water storage
 - the quantity of water available for application to a reasonable-beneficial uses
 - prevention of wasteful, uneconomical, impractical, or unreasonable uses of water resources
 - presently exercised domestic use and permit rights
 - preservation and enhancement of the water quality of the state
 - the state water resources policy as expressed by Chapter 373
 - (3) requires consideration of public recreation and protection of fish and wildlife and authorizes DEP / WMDs to prohibit or restrict future uses on designated water bodies that may be inconsistent with these objectives
 - (4) authorizes the Board to designate "undesirable uses" relating to a particular supply source (based on "the nature of the activity or the amount of water required"), for which the Board may deny a CUP
 - (5) authorizes the Board to designate preferred uses of a supply source that' enhance or improve the area's water resources, because of the nature of the activity or the amount of water required
- **Section 373.0363, F.S. (SWUCA recovery strategy)**
 - (2) contains numerous Legislative findings regarding the status of the water resource, availability of water supplies, and implementation of SWUCA recovery strategy to address identified resource issues and ensure sufficient supplies for existing and projected uses
 - (2)(f) Declares that implementing "components of the Southern Water Use Caution Area [SWUCA] Recovery Strategy . . . is for the benefit of the public health, safety, and welfare and is in the public interest."

- (3) directs implementation of the West-Central Florida Water Restoration Action Plan and (4) identifies the Plan's components
- **Section 373.046, F.S. (Interagency agreements)**
 - (1) provides for interagency agreements for various purposes, including "...relationships as may be deemed beneficial to the public interest."
- **Section 373.1501, F.S. (Local sponsor and CERP)**
 - (2) Legislature finds CERP is important for restoring the Everglades ecosystem, sustaining the environment, economy, and social well-being of South Florida. ... Further intend CERP components to be ... consistent with the balanced policies and purposes of 373.016
 - (3) declares various restoration projects are "in the public interest, for a public purpose, and necessary for the public health and welfare."
 - (5) (a) – (f) In developing project components, SFWMD shall: analyze and evaluate all needs to be met comprehensively and consider all water resource issues; determine project components are feasible and consistent with law and permissible; consistent with Chapter 373, provide reasonable assurances that the quantity of water available to existing legal users shall not be diminished by implementation of project components as to adversely impact existing legal users and that water management adapt to the needs of the restored environment; ensure implementation of project components is coordinated with existing utilities and public infrastructure and that impacts to same are minimized.
- **Section 373.171, F.S. (Rulemaking authorization)**
 - (1) "In order to obtain the most beneficial use of the water resources of the state and protect public health, safety, and welfare and interests of the water users affected, governing boards ..., may: (a) adopt rules ... affecting the use of water, as conditions warrant, and forbidding the construction of new diversion facilities or wells, the initiation of new water uses or the modification of any existing uses ...; (b) regulate the use of water within the affected area by apportioning, limiting, or rotating uses of water or by preventing those uses which the governing board finds have ceased to be reasonable and beneficial."
 - (2) "In adopting rules and issuing orders under this law, the governing board shall act with a view to full protection of existing rights to water in this state insofar as is consistent with the purpose of this law."
 - (3) "No rule or order shall require any modification of existing use or disposition of water in the district unless it is shown that the use ... is detrimental to other water users or to the water resources of the state."
 - See also Section 373.243, F.S.
- **Sections 373.175 and 373.246, F.S. (Water Shortage)**
 - Authorizes districts to declare water shortage and issue emergency orders temporarily reducing water use to protect resources from serious harm
- **Section 373.185(3)(a), F.S. (FL-Friendly Landscaping)**
 - Finds use of Florida-friendly landscaping and other use and pollution prevention measures serves a compelling public interest
- **Section 373.223, F.S. (CUP 3 – prong test)**
 - (1) States the "3 prong test" for CUP applications:

- Reasonable-beneficial test
 - “Reasonable-beneficial use” means the use of water in such quantity as is necessary for economic and efficient utilization for a purpose and in a manner which is both reasonable and consistent with the public interest.
 - Consistent with the public interest test
 - (2) authorizes WMDs to permit use of ground or surface water across county boundaries or outside the watershed (but within district boundaries) if consistent with the public interest (aka “local sources first”)
 - (3) Seven factors must be considered in making public interest decision
 - (4) provides for reservation of water for protection of fish and wildlife and states all presently existing legal uses shall be protected so long as such use is not contrary to the public interest
 - (5) provides a presumption that an alternative water supply (AWS) project proposed by a CUP applicant is consistent with the public interest in defined circumstances
- **Section 373.2234, F.S. (Preferred sources)**
 - Authorizes rules identifying **preferred water supply sources** that will provide a substantial new supply while sustaining existing water resources and natural systems.
 - Applicant proposing to use a preferred source must meet the 3 prong test, but in determining whether the use is consistent with the public interest, the board must take into account the proposed source is preferred.
- **Section 373.227 (Water Conservation)**
 - Legislative findings regarding conservation as a means of achieving economical and efficient use of water necessary to be reasonable-beneficial use, reduction of wasteful water use, and utility flexibility to tailor conservation measures, etc.
- **Section 373.228 (Landscape irrigation design)**
 - Legislative findings regarding water resource caution areas and that conservation is a way to meet future demand; Florida-friendly landscaping designs offer potential; agencies and others to develop landscape irrigation system design standards for new construction
 - In evaluating CUP applications from PWS, WMDs shall consider if local governments have adopted landscape irrigation (FL-friendly) ordinances
- **Section 373.2295, F.S. (Interdistrict transfers of groundwater)**
 - (4) requires consideration of evidence of future need for water in the withdrawal areas and in the proposed use areas, when a board determines whether an application for an interdistrict transfer and use of water is consistent with the public interest under section 373.223.
- **Section 373.233, F.S. (Competing applications)**
 - (1) When considering competing applications, the WMD has the right to approve or modify the one that best serves the public interest
- **Section 373.250, F.S. (Reuse of reclaimed water)**
 - (1)(a) Declares: “[t]he encouragement and promotion of water conservation and reuse of reclaimed water . . . are state objectives and considered to be in the public interest.”
 - (1)(b) Recognizes the interest of the state to sustain water resources through use of reclaimed water must be balanced with the need of reuse utilities to manage systems in accordance with a range of circumstances.

- **Section 373.701, F.S. (Declaration of policy)**
 - Broad Legislative policies are stated, similar to s. 373.016

- **Section 373.705, F.S. (Water Resource Development; Water Supply Development)**
 - Legislative intent expressed regarding sufficient water being available for all reasonable-beneficial uses, natural systems, and avoiding competition
 - Rolls of WMDs and water supply providers stated
 - WMDs to take the lead in identifying and implementing water resource development projects and be responsible for funding regionally significant WRDs
 - Water supply development projects that are consistent with regional water supply plans and meet one or more of defined criteria shall receive priority consideration for state / WMD funding assistance; first consideration is given to projects that replace existing sources to help implement a MFL

- **Section 373.707, F.S. (Alternative water supply development)**
 - (1) Legislative intent to encourage AWS development
 - Need to develop AWS to sustain economic growth / viability and natural resources
 - Cooperative efforts are mandatory to meet water needs that will supply adequate and dependable supplies without resulting in adverse effects on withdrawal areas
 - AWS must receive priority funding to increase supplies and benefit natural system
 - (1)(f) finds it is in the public interest for water users, the Department, and WMDs to “cooperate and work together in the development of alternative water supplies to avoid the adverse effects of competition for limited supplies of water”
 - Water Protection and Sustainability Program details ensue

- **Section 373.709, F.S. (Regional water supply planning)**
 - Regional water supply plan requirement and components defined
 - (2)(e) requires plan “[c]onsideration of how the [water supply development] project options ... serve the public interest or save costs overall by preventing the loss of natural resources or avoiding greater future expenditures for water resource development or water supply development.”

- **Section 373.713, F.S. (Regional water supply authorities)**
 - (1) provides for creation of regional water supply authorities by interlocal agreement if approved by the Secretary of the Department of Environmental Protection “to ensure that [the] agreement will be in the public interest and complies with the intent and purposes of this act.”

WMD Rule Provisions Re: Public Interest

- Rule 40C-2.301(2):
 - In order to provide reasonable assurances that the consumptive use is reasonable-beneficial an applicant shall demonstrate that the consumptive use is: ... (b) Is for a purpose and occurs in a manner that is both reasonable and consistent with the public interest.

- **Section 1.3.7.3:**
 - For purposes of this section [1.3.7.3: Criteria for Evaluation of Proposed Uses] and Section 3.10, “public interest” means those **rights and claims on behalf of people in general**. In determining the public interest in consumptive use permitting decisions, the Board will consider whether an existing or proposed use is **beneficial or detrimental to the overall collective well-being of the people or to the water resource** in the area, the District and the State (emphasis added).