

Date: May 31, 2016

To: May Ellen Winkler, SJRWMD

From: Rebecca Elliott, FDACS

RE: CFWI Regulatory Team –
Review of Draft 40X-2.301 Conditions for Issuance of Permits Document

General Comment: While the draft Conditions for Issuance document seeks to provide uniform language/concepts for the Central Florida Water Initiative (CFWI) area, a key part of uniformity is the provisions contained in the water management district's (WMD) Applicants Handbook (AH) which the applicant must satisfy to receive a Consumptive Use Permit (CUP). The AH's uniformity for CFWI needs to be addressed either concurrently with the Conditions for Issuance language or in a separate process that is another step clearly stated and understood by the CFWI Regulatory Team. The conditions must be defined uniformly in the AHs for the three WMDs such that the applicant, agency, and third parties have direction on what the terms mean and what criteria can be used to meet the 40X-2.301 rule conditions.

(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;

This phrase is another way of stating the specific criteria that is set forth in Section 2 of the AH, "Demonstration of Need, Source(s), and Demand". If the applicant meets these provisions, the application has provided the reasonable assurances that the quantity is necessary. Any other provisions that are duplicate such as the additional references to water conservation measures have already been stated in the provisions in Section 2 and do not need to be repeated.

Recommend the phrase be defined as:

Is a quantity that is necessary for economic and efficient use. Such quantity is determined by satisfying the provisions in Section 2.0 of the AH - Demonstration of Water Need, Source(s), and Demand.

Factors in Section 2 of the AH will need to be uniform.

(b) Is for a purpose and occurs in a manner that is both reasonable and consistent with the public interest;

This provision consists of two phrases. The first, that the purpose and manner is reasonable is established in (a) above when the applicant demonstrates that the quantity is needed. The second phrase that the purpose be consistent with the public interest as defined by the WMDs in the AH by demonstration that the applicant has met the “consistent with the public interest” provisions which are different than the applicant's demonstration of need. The WMDs will need to define what the public interest provisions are and then provide a way for the applicant to comply.

Recommendation for this phrase:

Is for a purpose and occurs in a manner that is both reasonable and consistent with the public interest by demonstrating the "Water Need, Source(s), and Demand" criteria and satisfying the provisions in the AH for the public interest criteria.

(c) Will utilize a water source that is suitable for the consumptive use;

This is an area that has not been specifically defined by all three WMDs. Since the CFWI Regional Water Supply Plan (WSP) is designed to identify water supply sources for all future water needs, where the WSP has made such identifications the AH could provide this as the preferred option with the applicant being given the ability to counter the designation based on individual factors.

Recommend more discussion on Conditions language, possible preferred sources, and the AH provisions.

(d) Will utilize a water source that is capable of producing the requested amount;

In order to determine if the shared sources within CFWI are capable of producing the amount of water requested, a common measurement is needed first. For water use, this is the "level of certainty" or climatological condition that is used to evaluate if the water is available and whether the use of that water will impact other users, the environment, or the water source itself.

A common measurement is critical to evaluate whether the use will impact the water resource or other users. It is also important for the review of competing water users in the permitting process. Although no decision has been made on the level of certainty that will be used in the CFWI rulemaking, the allocation quantity associated with the level of certainty must match the associated harm criteria used for resource protection.

Recommendations for this phase with decisions on a drought condition and harm pending:

Will utilize a water source that is capable of producing the requested amount by evaluating the proposed demand based on the water demands during a (defined drought event) and evaluating the impact of those demands on the factors identified in the public interest provision (b).

(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;

Consideration should be given on whether (c) and (e) should be combined.

This is an area that has not been specifically defined by all three WMDs. Recommend more discussion on Conditions language and the AH provisions.

As it relates to agriculture, the use of alternative water should not be imposed as a mandatory requirement since individual development of non-traditional sources may be an economic or regulatory burden to agricultural producers.

(f) Will not cause harm to existing offsite land uses resulting from hydrologic alterations;

Recommend discussion on language to address a defined time frame for application of this provision and define the hydrological alterations either in the Conditions language or in the AH.

(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;

This provision is defined similarly by the South Florida Water Management District (SFWMD) and Southwest Florida Water Management District (SWFWMD) in the AH. May need more discussion on whether to expand the rule phrase or address in AH.

Recommendation to further define this phrase as:

Will not cause harmful water quality impacts to the water source resulting from the withdrawal or diversion which is defined as whether the withdrawal would significantly alter the rate or direction of movement of a plume (horizontally or vertically) that has been defined and is located in the FDEP, county or EPA database.

2. Will not cause harmful water quality impacts from dewatering discharge to receiving waters;

Recommend discussion on language to address this provision either in the Conditions language or the AH. All three WMDs allow the National Pollutant Discharge Elimination System (NPDES) Permit or Environmental Resource Permit (ERP) to be used to satisfy this factor. SFWMD and SWFWMD require additional demonstrations for mining or dewatering.

3. Will not cause harmful saline water intrusion or harmful upconing;

Currently, there are a variety of methods between the WMDs that the applicant can use to demonstrate such intrusion is not occurring. Recommend discussion on language to address uniformity for this provision in the Conditions language or in the AH.