

40D-80.074 Regulatory Portion of Recovery Strategy for the Southern Water Use Caution Area.

(1) Background.

Section 373.042, F.S., requires the District to establish Minimum Flows and Levels for priority waters within its boundaries. The District has established Minimum Flows and Levels (MFLs) within the Southern Water Use Caution Area (SWUCA), described in subsection 40D-2.801(3), F.A.C., which includes all or portions of Hillsborough, Polk, Highlands, Hardee, DeSoto, Manatee, Sarasota, and Charlotte counties. In establishing the MFLs, the District determined that the existing flow rates and water levels of some of the priority waters are below the MFLs established for them. In such circumstances Section 373.0421, F.S., requires the District to implement a recovery strategy. The District has developed a recovery strategy that includes both regulatory and non-regulatory mechanisms as described in the SWUCA Recovery Strategy, dated March 2006. The regulatory approach does not make impacts on an MFL water body from permitted quantities existing as of January 1, 2007, a basis for permit denial because the Recovery Strategy taken as a whole is intended to achieve recovery to the established minimum flows and levels as soon as practicable. The Recovery Strategy involves water supply planning, an emphasis on conservation, the development of alternative water supplies to meet growing demands and allows for reductions in existing ground water withdrawals that are impacting water bodies with established MFLs, restoration of water bodies and flow patterns, and the regulation of existing and new water withdrawals. This Rule 40D-80.074, F.A.C., describes the regulatory approach of the Recovery Strategy.

(2) Objectives of Recovery Strategy.

Long-term (as defined in the WUP Applicant's Handbook Part B, Section 3.9.2.6.2.1., incorporated by reference in Rule 40D-2.091, F.A.C.) flow rates and water levels for most MFL water bodies are below the MFLs predominantly because ground water withdrawals have lowered Floridan aquifer levels in the SWUCA. As a result of the lowered aquifer levels, salt water intrusion is occurring, and river flows and lake levels are impacted by reduced water levels, including some of those rivers and lakes for which MFLs have been established. The goals of the District's Recovery Strategy are the recovery of flows and levels to the MFLs and the provision of sufficient water supplies for all existing and projected reasonable-beneficial uses. The Minimum Flows for rivers are described in Rule 40D-8.041, F.A.C. The Minimum Levels for lakes are described in subsection 40D-8.624(13), F.A.C. The Minimum Levels for aquifers are described in subsection 40D-8.626(2), F.A.C. The District intends to maintain on its website at www.watmatters.org a current listing of those water bodies for which a recovery or prevention strategy is in effect.

(3) Recovery Strategy Mechanisms.

(a) The non-regulatory mechanisms include conservation and water resource development efforts intended to increase the availability of alternative water supplies and to enhance the water resources of the SWUCA. Conservation, transitions in land use from agricultural to other use or changes in supply source, and the availability of alternative water supplies will help meet growing water demands in the SWUCA, and will also allow for reductions in ground water withdrawals.

(b) The guiding principles for the regulatory portion of the Recovery Strategy are that it should:

1. Contribute significantly to resource management and recovery;
2. Protect the investments of existing water use permit holders; and,
3. Allow for economic expansion and new economic activities in the SWUCA.

In addition, the District recognizes that the water resources in the SWUCA are subject to varying degrees of stress. The regulatory component of the Recovery Strategy has been designed in recognition of these variations. How water use permit applications will be affected by the regulatory mechanisms will vary depending on the resource conditions in the area affected by a proposed withdrawal and the extent to which the withdrawals will contribute to these resource conditions. For example, the regulatory mechanisms continue the existing "Most Impacted Area" (MIA) designation in coastal portions of southern Hillsborough, Manatee and northern Sarasota counties. The Salt Water Intrusion Minimum Aquifer Level is established within the MIA. New ground water withdrawals within the MIA and the area surrounding the MIA that impact salt water intrusion will be affected more by the MIA designation and the Salt Water Intrusion Minimum Aquifer Level, than will permit applications for new ground water withdrawals in the eastern portions of the SWUCA. Conversely, permit applications for new ground water withdrawals in the coastal areas will be much less affected by the MFLs established for the upper Peace River and the priority lakes in Polk and Highlands counties than permit applications for new ground water withdrawals on the Lake Wales Ridge.

(c) The water use permitting rules in Chapter 40D-2, F.A.C., address water conservation, alternative water supplies and recovery to MFLs. These water conservation and alternative water supplies rules include the amendments to Chapter 40D-2, F.A.C., November 15, 1990, January 1, 2003, as well as subsequent rules adopted as of January 1, 2007, developed in conjunction with the

implementation of the Minimum Flows and Levels Recovery Strategy. In combination, these rules result in more efficient use of water and a lessening of impacts from withdrawals on water bodies with established MFLs.

(4) Restoration of river flows and lake levels.

In addition to the reduction of pumpage and permitted quantities, and the development of new water supplies, the supplemental augmentation of rivers and lakes that are below their established Minimum Flow or Level will contribute to the attainment of the objectives of the Recovery Strategy set forth in subsection 40D-80.074(2), F.A.C. The District will reserve quantities of water from water sources necessary for such augmentation.

(5) Periodic Review of Recovery Strategy.

(a) The Governing Board will measure progress based on an annual assessment of the water resource criteria and cumulative impact analysis described below.

1. The water resource criteria referred to above are:

a. Improving Upper Peace River flows and Ridge Lake water levels;
b. Maintaining or increasing ground water levels below the Upper Peace River and in the Ridge Lake area; and
c. Increasing ground water levels in the Upper Floridan aquifer within the Most Impacted Area and the reduction in the rate of salt water intrusion.

2. The cumulative impact analysis referred to above consists of the following:

a. The development of alternative water supplies;
b. The effects of water conservation;
c. The hydrologic conditions and patterns;
d. The effects of climatic conditions;
e. The effects of water resource development activities;
f. The changes in amounts, distributions and use types of existing and new water use withdrawals (actual and permitted) within the SWUCA; and
g. The effect of land use changes on the water resources.

(b) Results of the annual assessment referred to above will be reported to the Governing Board on an annual basis.

(c) In addition to the annual assessments referred to the District will review the Recovery Strategy at least every five years to assess its progress as part of updating its Regional Water Supply Plan. If the annual assessments or five-year reviews do not indicate progress, the Governing Board will revise the Recovery Strategy, as appropriate, to achieve progress.

(6) The provisions of subsections 40D-80.074(1)-(4), F.A.C., are informational, intended to provide an overview of resource conditions related to the water bodies for which minimum flows and levels have been established and the components of the Recovery Strategy. The provisions of the SWUCA minimum flows and levels and permitting rules in Chapters 40D-2, 40D-4 and 40D-80, F.A.C., shall control in the event of any conflict or inconsistency with the provisions of subsections 40D-80.074(1)-(4), F.A.C.

(7) The District recognizes that although the rate of salt water intrusion (SWI) will be reduced through implementation of the Recovery Strategy, some existing legal uses of water may be affected by the continued movement of the salt water interface. The District's water supply planning indicates that much of the area potentially susceptible to SWI is experiencing land use transition from traditionally agricultural lands to forms of urban development. The water needs of these new land uses are planned to be met with alternative water supplies funded all or in part by the District to the greatest extent practical. In those cases where the existing permittee, impacted by SWI, desires to continue the existing legal water use, the District has a number of programs that address that situation. The District has available various preventative and remedial programs to permittee's potentially at risk of salt water intrusion such as the Quality of Water Improvement Program (QWIP), the Facilitating Agricultural Resource Management Systems (FARMS) program, the New Water Source Initiative, the Water Supply and Resource Development Program, and the Cooperative Funding Program (as it relates to replacement of potentially affected water sources with alternative water supplies). For information on these programs, contact the District's headquarters by calling (352) 796-7211 or 1(800) 423-1476, or by emailing the District at executive@swfwmd.state.fl.us or by opening the District's website www.watermatters.org and clicking on the link "Contact Us".

Rulemaking Authority 120.54, 373.0421, 373.044, 373.113, 373.171 FS. Law Implemented 373.016, 373.023, 373.036, 373.0395, 373.042, 373.0421, 373.171 FS. History—New 1-1-07, Amended 5-19-14.