



September 21, 2012

Janet Llewellyn
Policy Administrator
Office of Water Policy
3900 Commonwealth Boulevard
Marjorie Stoneman Douglas Building 49
Tallahassee, Florida 32399

Re: Initial Comments and Questions on the Department of
Environmental Protection's Consumptive Use Permitting Consistency
Initiative

Dear Ms. Llewellyn,

The Florida Conservation Coalition (FCC) is submitting the following questions and concerns to the Department for consideration in its process to modify Florida's Consumptive Use Permitting Regulations. We support consistency among the water management districts' water use permitting rules where logical and reasonable. However, we also strongly believe protection of Florida's water resources and its unique ecology and providing for the needs of resource sensitive economic growth should outweigh any changes made in the name of efficiency, which are not consistent with these principles.

The FCC has reviewed the available materials from the Department and our members have attended the various workshops. Simplification of District permitting processes needs to proceed simultaneously with development and integration of the new permitting rules consistent with those portions of Chapter 373, F.S., designed to assure the protection of Florida's water resources.

There are two substantive themes implicit throughout the proposals that cause us deep concern. First, we are concerned that the overall effect of the rules will be to perpetuate the existing permitted uses for as long as possible regardless of whether the current or

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unanticipated use remains reasonable and beneficial into the future. This is moving dangerously close to privatization of the allocation of water, to which the FCC is firmly opposed. The allocation of water is rightfully and legally the sole authority and responsibility of the State of Florida.

Secondly, each step in this direction will make it more difficult for the Department to rectify past wrongs, to more fairly reallocate water for high impact economic growth, and to reserve water needed to repair and sustain our springs, rivers, streams, wetlands, lakes and estuaries. Chapter 373, above all, recognizes that “uses” of water must be constantly readjusted to reflect new and emergent public priorities caused by changing climatic or physical conditions, economics, statutory law, or state policy.

Policy Issues

Resource Limited Areas

The Department has emphasized that regional issues matter, and that rules which support regional needs will be promulgated. We support this concept. Of concern to the FCC are the Department’s emerging approaches to water management in Resource Limited Areas. The Department apparently intends to identify and delineate portions of the state where the resource is already overcommitted from issuing permits water in excess of what is available or where Minimum Flows and Levels (MFL’s) have already been exceeded.

We have not seen the methodology used by the Department to delineate the Resource Limited Areas currently depicted on the Department’s website. While some of the areas included, such as the Southern Water Use Caution Areas (SWUCAs) in the Southwest Florida Water Management District (SWFWMD) are well documented (and adopted by rule), other significantly impacted areas are ignored. As examples: the Central Florida Water Initiative area (CFWI), areas previously shown to be resource-limited by the St. Johns River Water Management District, Marion County and other north Florida springs areas and areas in the South Florida Water Management District adjacent to the SWFWMD’s SWUCA area.

With that in mind what, what will be the process to formally delineate the other and future additional Resource Limited Areas? As mentioned, the areas shown within SWFWMD were originally delineated through stakeholder workshops followed by formal rulemaking. We would expect a similar public process for

delineation of the “unadopted” areas referenced on the current map as well as new Resource Limited Areas.

The FCC cannot determine from the available information which of the proposed streamlined permit renewal rule components will be applied within Resource Limited Areas. Will the proposed rules provide that none of these new consistency initiative components be effective within these areas? The FCC would hope other more stringent requirements would be implemented to reallocate water for economic development or other public interest purposes, and to meet reservations or MFLs. If such rules are not adopted at the same time as

the Resource Limited Areas are delineated, then attaining MFL's, water resources restoration, and economic growth would occur solely through the charity of existing permit holders. Without such protective regulations, the Department has pre-determined the *de facto* owners of the water resources within Resource Limited Areas. With protective regulations it would be the Department who would reallocate this locally scarce resource for economic growth and legitimate conservation and other public purposes.

General Permits

The Department currently proposes that certain withdrawals be issued by rule. For example, no application, evaluation, or permit would be required for withdrawals of less than 100,000 gallons per day (gpd) where the withdrawal capacity is less than 1,000,000 gpd or the well diameter is 6-inches or less. While there are other provisos, the apparent presumption is that such withdrawals are *de minimis* and would cause no cumulative impacts. However, with such capacity, multiple withdrawals of up to 999,999 gpd can occur and result in significant hydrologic impacts. Pumpage from a 6-inch well can certainly exceed the limit mentioned and multiple unmonitored withdrawals clustered together, particularly within or adjacent to already stressed water resources and environmental systems could result in significant over-pumping and environmental damage.

We have not been able to locate any analysis relied upon by the Department to demonstrate that these thresholds would result in *de minimis* impacts across the various regions of the state.

If such proposals are enacted, what "mechanisms" will be used by the water management districts to ensure (a) thresholds are not being exceeded, and (b) unacceptable impacts are not occurring? We would assume that the Department would issue regular reports providing this information for given areas including pumpage amounts and impacts.

Given the recent reductions in water management district staffing levels and budgets, what assurance can the Department provide that a problem caused by "No Notice" (unmonitored) uses will be discovered before it becomes a severe or irreversible detriment to natural systems or adjacent legal water users?

Because of these presently unanswered questions, we strongly believe more careful thought needs to be given to this proposal.

Compliance Reports for Extended Permits of 20 Years or More

The current proposal states that extended permits must only comply with those rules in place when the permit was initially issued. Given that the standard permit term is now 20 years, we cannot envision how the water management districts will be able to address changing water resource availability and priorities, and/or unacceptable environmental impacts over time.

If there is a procedure contemplated to modify existing permits if public interest dictates, we have not been able to locate it in the information provided to date. If there is none, we would like the Department to propose one, or explain how it can take the position that no resource management changes will be needed for potentially hundreds of permits with 20 year durations. The FCC cannot envision how Everglades' restoration, springs renewal or sensible economic growth could occur without such a policy in place.

There appears to be no provisions for reducing allocations for permitted quantities that are currently unnecessary and not even needed for the full permit term. These unneeded quantities could be used to address changes in growth or economic conditions, or even crop management. Some of the water management districts have already facilitated the accommodation of crop changes with the agricultural community. This might serve as a template for the Department's consideration. The FCC would be interested in the standards to determine under what circumstances permitted, but unused water would be "needed" during the permit term by the current permittee, rather than by a worthy competing need/interest.

Current statutory policy suggests that "water banking" serves no public interest and is counter-productive. The premise is that it is inherently anti-growth and inhibits economic development by tying up unneeded water in existing permits that might otherwise be available for a new or higher priority use. If growth or economic conditions reduce a current permittee's water needs, we do not understand how the Department could maintain that the excess water in the permit will continue to be considered "reasonable-beneficial", as required by statute.

Moreover, it appears many scenarios under the proposed Compliance Reporting policy will move the State toward privatization of water. This is a major concern of the FCC.

Finally, the proposal states that if water needs are reduced through conservation, there will be no allocation reductions to existing permittees. Allowing conserved quantities to be rolled forward to meet projected water demands for a reasonable period makes sense. But allowing unneeded water to be maintained in a permit would again result in "water banking", which inhibits economic development by tying up unneeded water in existing permits which otherwise would be available for environmental recovery and economic development. If a permittee implements water conservation measures that significantly reduce water needs, we do not understand how or why the "conserved" water would automatically be considered a "reasonable-beneficial" use as required by statute.

Sector Planning and Water Use Permits

An issue not specifically identified in the Department's proposal, but of concern to the FCC, is the 2011 growth management changes relating to Sector Plans for 15,000 acre-plus sites. Does the Department agree that this legislation could be read to virtually guarantee long-term water reservations for private property owners? We hope and expect that the Department will address this important issue.

Technical Issues

Alternative Methods of Flow Verification

The Department's current proposal would allow permitted water users to employ various methods to measure water withdrawals. Accurate measurement of water withdrawals is critical to understanding the viability and sustainability of the state's water resources. Many of the methods proposed have historically been proven unreliable for accurate flow measurement. For example, one proposed method - the use of pump electrical consumption by converting kilowatt-hours to hours run - is flawed because it does not take into account the varying hydraulic pressures within the well that affect the amount of flow over time. Another proposed method, providing the number of operating hours for a given pump, suffers from the same inadequacy. In addition, neither of these methods can be independently verified. This might be compared to a power company allowing

customers to estimate how much electricity they used rather than relying upon a meter. The only appropriate, verifiable method of measuring withdrawals is the flow meter. There is a substantial amount of literature on this subject that indicates accurate withdrawal estimation is also in the water user's best interest, as exact knowledge of flows can result in a substantial cost savings in terms of power generating costs, fertilizer application, etc. This matter was rigorously researched and debated more than twenty years ago during SWFWMD's Ch. 40D-2, FAC, rulemaking effort. Inadequate flow measurement methods will make solving water resource problems, such as the flow declines in many of the state's springs, even more challenging than they are already.

Requiring Water Users to Report Withdrawal Quantities on a Semi-Annual Basis.

Under this proposal, a water user who does not record pumpage, or mis-reports it, will only be found out after such occurrence has been ongoing for six months. Most withdrawal reporting is only due within the month following the last reading, so the gap would then be up to seven months. Given the diminishment of staff resources, it would be reasonable to suggest that it could be two months or more after the report is due before District staff could contact the offending permittee. Should correcting the problem require a mechanical fix, then an additional month or two might elapse. Therefore, it is not unreasonable to suggest that a year's worth of over-pumping could occur before the situation is corrected. Monthly or quarterly pumpage reporting should be required.

Permitting Consistency with the Planning Level of Certainty at 1-in-10.

While it makes sense to use a 1-in-10-year statistical frequency for planning purposes to ensure availability of sufficient water to address a severe drought from a regional perspective, there is no validity to the idea that permitted quantities should be similarly based. When droughts occur, water shortage restrictions and extra conservation measures are the primary tools available. These mechanisms supersede permit allowances during these periods. However, if used for permitting purposes the higher the level of certainty of water availability, the greater the quantity of water that would be committed for each water use permit. Thus, going to a 1-in-10 drought certainty would mean that permittees could use the quantities needed in an extreme drought any given year, even one with abundant rainfall. This proposal would certainly not foster water conservation, and would inhibit economic development by tying up unneeded water in existing permits. That same water might otherwise have been available to a new or planned use. Such actions could also inhibit the return of water to the resource in water-stressed areas. Use of an average rainfall condition for permitting with an allowance for greater use during extreme droughts, subject to water shortage restrictions, would be the more

prudent approach. Again, this is another example of giving permittees the maximum amount of water instead of the state assuming its proper role in maintaining the availability of water for all Floridians and its environment.

Irrigation Demands

The Department proposes that the same equation for irrigation demands be used statewide with variables accounting for regional differences, and the Agricultural Field Scale Irrigation Requirement Simulation (AFSIRS) method appears to be the method of choice in the agricultural community. Accurate allocation of irrigation quantities, or any water use, is important to both protecting the environment and providing for economic development. The method chosen must be science-based, and proven to allocate real-world quantities. Since the late 1980s, SWFWMD has used a computer program called “Agmod” to calculate permitted irrigation quantities. SWFWMD’s Agmod program has been compared to actual metered data for a variety of crop types and has demonstrated that it suggests quantities that closely match actual pumpage data. Previous experience by SWFWMD with AFSIRS indicated that to use it requires unreasonable or unavailable data, causing the user to generate “guesstimates” of numerous variables. When previously evaluated at SWFWMD, AFSIRS provided excessive quantity allocations when compared to metered pumpage data. We would like to examine any assessments or testing which has been or is planned to be completed in order to ensure that AFSIRS, or any other method chosen, provides realistic allocations.

Thank you very much for this opportunity to comment and ask specific questions. The FCC believes the answers will be central to the Department’s interest in adopting a rule that achieves its responsibilities. The need for this far reaching proposed rule change has not been adequately explained. In sum, and in light of major budget and personnel reductions in the water management districts and DEP, we are concerned that significant modifications to the CUP rule as proposed will result in insufficient oversight, monitoring, and protection of water resources. While efficiency and streamlining have merit, they too have limits, beyond which the resources will suffer.

We will continue to follow this important process and make every effort to ensure that any proposed rule changes recognize that water resources are vital to the future of Florida’s environment and economic potential and must be protected

and managed with great care and respect. We look forward to meeting with you and others to work towards this end.

Sincerely,

Florida Conservation Coalition, Steering Committee:

Bob Graham, Chairman
Nathaniel Pryor Reed, Vice Chairman
Audubon Florida
Florida Wildlife Federation
League of Women Voters Florida
1000 Friends of Florida
Sierra Club
St. Johns Riverkeeper
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Cc: Secretary Herschel Vinyard