

Conservancy of Southwest Florida * Clean Water Fund * Everglades Foundation
Everglades Law Center * National Parks Conservation Association
Sanibel Captiva Conservation Foundation * South Florida Audubon Society

September 19, 2012

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

RE: Consumptive Use Permitting Consistency Comment Letter

Dear Ms. Llewellyn,

The undersigned organizations and groups are committed to protecting the environment and ensuring adequate and sustainable water supplies for all users, including the natural system and fish and wildlife. Thank you for giving us the opportunity to comment on the proposed rules and concepts that your agency has work shopped this year. While we maintain that some local basin or regionally specific considerations may necessarily preclude permitting consistency, we look forward to continuing to participate in future workshops as the concepts become refined and rules are drafted.

GENERAL COMMENTS:

Before addressing specific comments, it is imperative to lay out some overriding concepts that we feel are fundamental to any discussion on planning or permitting. Each of the water management districts (WMD) has a robust consumptive use permitting (CUP) program, approved regional water supply plans (RWSP) and adopted minimum flows and levels (MFLs). However, none of the districts have created a water budget for any of its water bodies or water sources. In addition to the challenge of water budgeting, generally, most RWSPs do not identify or quantify natural systems water needs. It is difficult to envision a system of water management that can allocate water for consumptive uses permitted to a no harm standard so as to truly protect water for the environment, without first knowing the amount that the system has available and the baseline needs of the natural systems. How can a WMD realistically establish an MFL for a waterbody or aquifer without knowing how much water the system produces or holds? We would continue to urge the DEP to require the WMDs to begin serious efforts to quantify the amount of water each source can produce or can sustainably supply. It is only if water budgets are created, that the WMD can understand the amount of water that can be sustainably allocated for different uses.

Second, recognizing the importance of projections for water use demand, we would request that the environmental community have a seat in the working group.

Third, we cannot overstate the importance of conservation as a water management tool. We urge the DEP throughout its rules to emphasize the importance of conservation in water planning and permitting and to require, where authorized by law, additional conservation efforts and stringent reviews of those efforts.

SPECIFIC COMMENTS:

Permitting and Planning Levels of Certainty - Clearly, permits should not provide more water for users than the amount being planned for through the planning process. The entire reason for planning is defeated if permits give water to accommodate more frequent drought events. In that way, we support DEP's concept to provide consistency between the planning level and the permitting level of water certainty. However, in no instance should a permittee be authorized to have a 1 in 10 level of certainty if to do so would allow there to be harm to the water resources as a result of the water use.

Portion of Conserved Water Should Be Dedicated for Natural Systems - DEP proposes that any water conserved by a permittee should remain in the hands of the permittee and that the permit be automatically extended for the amount of time it takes to use the "saved" water. While we recognize this strategy might incentivize a permittee to conserve water, we would recommend that some portion of the "saved" water be "reserved" or set aside for the environment. This amount may be as little as 10% or as much as 50% to address the chronic water shortages of some state waters. This would be a first step in some areas of Florida for the establishment of reservations of water.

More Stringent Water Conservation Measures Needed for Basins with MFLs - Similar to the idea expressed above, we strongly urge DEP to draft rules that address additional conservation measures for permittees who are drawing from sources where MFLs have been exceeded or violated within the previous five years. The amount of water to be set aside for the environment could be tied to the magnitude of the MFL violations.

Permit Types - Public notice is the only way the public can know about potential new permits. For that reason, public notice should be given electronically to those specifically requesting it and posted in a transparent place on the applicable WMD website, and the notice should apply for all new or renewal permits for quantities of more than one million gallons per day. After notice is given, the public should have opportunity to comment. For permits of this size, all decisions should take place at a noticed meeting of the full Governing Board.

Those permits having a capacity of less than one million gallons per day should not be lumped into a category of No Notice General Permits. These “smaller” permits add up to an impressive amount of water and one cannot overlook the cumulative effect when accounting for the state’s total water supply. We appreciate the acknowledgement of resource limited areas and the requirement that those areas will require individual permits. For the remainder of the permits, we recommend DEP consider at a minimum a third category of permits -regular general permits- which can still be done in the desired streamlined manner but which would allow for adequate public notice as well as afford more of an opportunity for compliance checks and public awareness. Consider the format currently in use by DEP for dock exemptions. Reporting is done online and creates an inventory that can contain important information which provides easy and transparent access for all.

Institute Water Use Tracking System to Accurately Assess Actual Use - WMDs are unable to adequately assess the quantity of water available from any source if they do not have frequent and accurate data on water use from all sectors and user categories. We recommend that DEP require all permittees (including agriculture) to submit this data monthly. Monthly submissions are important since Florida has a distinct dry and wet season, which markedly changes the volumes of waters users need and use.

Compliance Reports and Permit Modifications – As permit durations are extended, the water that gets locked up in the permit begins to look more and more like an ownership right. The WMD however has the authority to issue permits and it is charged with imposing such reasonable conditions to ensure the use is “not harmful” to the water resources of the area, is a reasonable/beneficial use and is consistent with the public interest. However, the WMD cannot perform this essential function if it does not have the opportunity to require compliance reports. For this reason, we do not support extending permit durations automatically (for example, in cases where a utility’s permitted allocation is less than its actual water use even if the water savings is the result of conservation efforts) without first requiring a compliance review and requiring a report to determine that there continues to be no harm to the water resources of the area and that it is a reasonable/beneficial use. The rule should be very clear that permits can be modified at any time where it is determined the permits, either individually or cumulatively, are causing harm to the water resources of the area.

Use Supply Side Management to Address Scientifically Supported Demand Projections - Currently water allocations in some basins are driven by demand without regard for the availability of water to supply that demand. This becomes a challenge during the dry seasons and droughts when the burden of water shortage is shifted first and sometimes solely onto natural systems while permitted users still

receive all or nearly all their demand. In the past six years of drought this has occurred numerous times in the SFWMD resulting in significant harm to multiple natural systems while agriculture has not experienced cutbacks. We recommend that water allocations go back to a supply side formula so that when water supplies are affected by drought, water restrictions are applied across all users and not borne alone by natural systems.

Require Water Quality Monitoring of Waters Receiving Discharges of Reclaimed Water – Although HB 639 specifically removed the authority for WMDs to require a permit for the use of reclaimed water, it still allows the WMDs to include conditions that govern the use of the permitted sources. To that end, we recommend that DEP revise the rule to direct that when an applicant proposes a surface water or groundwater withdrawal, that the WMD require the utilization of reclaimed water by the applicant, where it is available and where it is of the quality and reliability for the proposed use. This requirement will result in additional water conservation that will better protect surface and groundwater sources and prevent the unnecessary drawdown of wetlands.

Prioritization of Water Bodies for Reservations – We commend DEP in drafting a rule to require the WMDs to create a priority list annually for the establishment of reservations. Recognizing that some districts are establishing “Restricted Allocation Areas” rules pursuant to s. 373.223, F.S., we think this rule should also include priority lists for the RAAs annually as well.

Again, we thank you for giving us the opportunity to participate in the workshops and provide additional comment as the process unfolds.

Sincerely,

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