

**RULES OF THE
SOUTHWEST FLORIDA WATER MANAGEMENT DISTRICT
CHAPTER 40D-2
WATER USE PERMITS**

40D-2.301 Conditions for Issuance of Permits.

(1) In order to obtain a Water Use Permit, an Applicant must demonstrate that the water use is reasonable and beneficial, is in the public interest, and will not interfere with any existing legal use of water, by providing reasonable assurances, on both an individual and a cumulative basis, that the water use:

- (a) Is necessary to fulfill a certain reasonable demand;
- (b) Will not cause quantity or quality changes that adversely impact the water resources, including both surface and ground waters;
- (c) Will not cause adverse environmental impacts to wetlands, lakes, streams, estuaries, fish and wildlife or other natural resources;
- (d) Will not interfere with a reservation of water as set forth in Rule 40D-2.302, F.A.C.
- (e) Will comply with the provisions of 4.3 of the Basis of Review described in Rule 40D-2.091, F.A.C. [minimum flows and levels provisions];
- (f) Will utilize the lowest water quality the Applicant has the ability to use, provided that its use does not interfere with the recovery of a water body to its established MFL and it is not a source that is either currently or projected to be adversely impacted;
- (g) Will not significantly induce saline water intrusion;
- (h) Will not cause pollution of the aquifer;
- (i) Will not adversely impact offsite land uses existing at the time of the application;
- (j) Will not adversely impact an existing legal withdrawal;
- (k) Will incorporate water conservation measures;
- (l) Will incorporate use of Alternative Water Supplies to the greatest extent practicable;
- (m) Will not cause water to go to waste; and
- (n) Will not otherwise be harmful to the water resources within the District.

40D-2.381 Standard Permit Conditions.

Every permit acquired under this Chapter shall include the following standard conditions which impose certain limitations on the permitted water withdrawal:

(a) If any of the statements in the application and in the supporting data are found to be untrue and inaccurate, or if the Permittee fails to comply with all of the provisions of Chapter 373, F.S., Chapter 40D, F.A.C., or the conditions set forth herein, the Governing Board shall revoke this permit in accordance with Rule 40D-2.341, F.A.C., following notice and hearing.

(b) This permit is issued based on information provided by the Permittee demonstrating that the use of water is reasonable and beneficial, consistent with the public interest, and will not interfere with any existing legal use of water. If, during the term of the permit, it is determined by the District that the use is not reasonable and beneficial, in the public interest, or does impact an existing legal use of water, the Governing Board shall modify this permit or shall revoke this permit following notice and hearing.

(c) The Permittee shall not deviate from any of the terms or conditions of this permit without written approval by the District.

(d) In the event the District declares that a water shortage exists pursuant to Chapter 40D-21, F.A.C., the District shall alter, modify, or declare inactive all or parts of this permit as necessary to address the water shortage.

(e) The District shall collect water samples from any withdrawal point listed in the permit or shall require the Permittee to submit water samples when the District determines there is a potential for adverse impacts to water quality.

(f) The Permittee shall provide access to an authorized District representative to enter the property at any reasonable time to inspect the facility and make environmental or hydrologic assessments. The Permittee shall either accompany District staff onto the property or make provision for access onto the property.

(g) Issuance of this permit does not exempt the Permittee from any other District permitting requirements.

(h) The Permittee shall cease or reduce surface water withdrawal as directed by the District if water levels in lakes fall below the applicable minimum water level established in Chapter 40D-8, F.A.C., or rates of flow in streams fall below the minimum levels established in Chapter 40D-8, F.A.C.

(i) The Permittee shall cease or reduce withdrawal as directed by the District if water levels in aquifers fall below the minimum levels established by the Governing Board.

(j) – (r) not included

Water Use Permit Information Manual Part B, Basis of Review

4.3 MINIMUM FLOWS AND LEVELS

The District has adopted Minimum Flows and Levels for certain waters within the District. Those Minimum Flows and Levels are set forth in Chapter 40D-8, F.A.C. Through implementation in Rule 40D-2.301(1)(d), F.A.C., and this Section 4.3, those Minimum Flows and Levels are one criterion used by the District in evaluating applications for water use permits under Chapter 40D-2, F.A.C. Rule 40D-2.301(1)(d), F.A.C., this Section 4.3 and Chapter 40D-80, F.A.C., govern the manner in which this one criterion is utilized in evaluating a water use permit application. Accordingly, applicants shall demonstrate compliance with established Minimum Flows, Minimum Wetland Levels, Minimum Lake Levels and Salt Water Intrusion Minimum Aquifer Levels (hereinafter sometimes collectively called Minimum Flows and Levels) set forth in Chapter 40D-8, F.A.C., as follows:

A. Withdrawals That Affect Water Bodies for Which Minimum Flows and Levels Have Been Adopted Within Those Portions of Hillsborough County north of State Road 60, and Pasco and Pinellas Counties (hereinafter the “Area”). In establishing Minimum Flows and Levels, the District has determined that the actual water levels in many of the water bodies for which Minimum Flows and Levels have been established are below the Minimum Flow and Level. The District is expeditiously implementing a recovery strategy for the Area in keeping with the District’s legislative mandate pursuant to Sections 373.036, 373.0361, 373.0421, 373.0831, 373.1962 and 373.1963, F.S., to resolve the water supply and water resource impact concerns of the Northern Tampa Bay Area in a cooperative manner with the water suppliers and interested parties. This Section 4.3 A. and Chapter 40D-80, F.A.C., set forth the regulatory portion of the first phase (through December 31, 2010) of the recovery strategy for the Area. The following requirements of this Section 4.3 A. effectuate that recovery strategy and shall be effective only through December 31, 2010. The District will evaluate the state of knowledge of these matters in 2010. Based on that evaluation, the District may revise this Section 4.3 A. as

appropriate. Compliance with Section 4.3 A. does not, by itself, satisfy the requirements of Chapter 40D-2, F.A.C., for new withdrawals proposed after August 3, 2000.

1. For New Withdrawals Proposed After August 3, 2000.

a. Where above Minimum Flow or Level--For water bodies that are predicted to be impacted by the proposed withdrawal and where the actual flow or level is at or above a Minimum Flow or Level, withdrawals shall be limited to that quantity, as may be further limited by other provisions of 40D-2.301, F.A.C., and this Basis of Review, that does not cause the actual flow to fall below the Minimum Flow, nor cause the actual level to fall below the Minimum Level on a long-term average basis (the "Baseline Quantity"). For purposes of this Section 4.3 A., "long-term" means a period which spans the range of hydrologic conditions which can be expected to occur based upon historical records, ranging from high water levels to low water levels. In the context of a predictive model simulation, a long-term simulation will be insensitive to temporal fluctuations in withdrawal rates and hydrologic conditions, so as to simulate steady-state average conditions. In the context of an average water level, the average will reflect the expected range and frequency of levels based upon historic conditions. This period will vary because reasonable scientific judgment is necessary to establish the factors to be used in the assessment of each application depending on the geology and climate of the area of withdrawal, the depth of and number of wells and the quantity to be withdrawn.

i. If the withdrawal of the requested quantity of water does not meet the condition in 4.3 A.1.a. above, the applicant shall identify the Baseline Quantity, and the District shall consider, as may be further limited by other provisions of 40D-2.301, F.A.C., and this Basis of Review, the authorization of the additional quantity of water to be withdrawn where the applicant:

(1) Demonstrates that there are no reasonable means to modify the proposed withdrawal to meet the conditions in 4.3 A.1.a., including the use of alternative supplies, to reduce or replace the amount of the requested quantity exceeding the Baseline Quantity. Cost shall not be the sole basis for determining whether the means are reasonable; and

(2) Provides reasonable assurance that significant harm will be prevented to the wetlands and surface water bodies that could be affected by the proposed withdrawal if the requested quantity is withdrawn; and

(3) Demonstrates that any measures used to provide the reasonable assurance specified in 4.3 A.1.a.i(2) above will not cause a violation of any of the criteria listed in 40D-2.301(1)(a)-(n), 40D-4.301, or 40D-4.302, F.A.C., as applicable.

ii. To support whether the applicant has provided reasonable assurance pursuant to 4.3 A.1.a.i(2) above, the applicant must submit an environmental management plan ("EMP") for approval by the District describing the measures to be used to prevent significant harm from withdrawal of the requested quantity. The EMP must include a monitoring program for early detection of impacts to wetlands and surface water bodies that could be affected by the proposed withdrawal and an implementation scheme for corrective actions to prevent unacceptable adverse impacts. The EMP shall include provisions to evaluate changes in water quality, water levels, vegetation, and fish and wildlife. The EMP shall also include clear thresholds as to when the implementation scheme will be initiated. The implementation scheme shall include details as to how the proposed measures will be effected, the methods to be followed in order to functionally replicate the natural hydrologic regime of affected water bodies, and efforts to be undertaken to minimize the effects of changes in water chemistry. The implementation scheme shall also require reduction of pumping to the Baseline

Quantity as a corrective action if no other measures, including supplemental hydration, are successful in preventing unacceptable adverse impacts to wetlands and surface water bodies due to withdrawals. An approved EMP shall be incorporated as a special condition to any permit issued.

(1) The measures proposed may include hydration of affected water bodies or modification of existing drainage structures to prevent significant harm to affected water bodies, provided that the measures within the EMP minimize the need for supplemental hydration to the greatest extent practical.

(2) If supplemental hydration is proposed, the applicant will be required to identify in the application and monitor a representative number of wetlands in the vicinity of the withdrawal. The monitored wetlands shall include a representative number of MFL or MFL surrogate wetlands not receiving supplemental hydration. An MFL surrogate wetland is the nearest wetland site of the same type and condition to the proposed withdrawal that is not anticipated to require supplemental hydration. The monitored wetlands shall also include, where available, non-MFL wetlands not receiving hydration as well as MFL and non-MFL wetlands proposed for supplemental hydration.

(3) A representative number of wetlands is a number of a particular type or types of wetlands, in the vicinity of the withdrawal, sufficient to adequately determine the hydrologic response of the wetlands and surface water bodies that could be affected by the proposed withdrawal to rainfall and water withdrawals.

(4) If supplemental hydration is proposed to rehydrate lakes or wetlands, in order for a water use permit authorizing the Requested Quantity to be issued, the Governing Board must determine whether:

(A) The measures within the proposed EMP minimize the quantity of water required for supplemental hydration by raising water levels by filling or blocking ditches, removing culverts or outflows, or other alterations, where practical and feasible, and whether such alterations will achieve the applicable minimum level (where the measures proposed by the application identify the need for specific Environmental Resource Permits, such permits must be obtained prior to withdrawal of the requested quantities;

(B) The applicant has proposed use of the lowest quality of water for rehydration which is scientifically, technically and environmentally feasible to prevent unacceptable adverse impacts;

(C) Measures within the proposed EMP minimize the need for ground water hydration to the greatest extent practical based on the quantity, frequency and duration of the anticipated use;

(D) The measures within the proposed EMP minimize or avoid the potential for unacceptable adverse impacts to water quality or fish and wildlife in the wetland or surface water body receiving supplemental hydration, and, if such a potential exists, the EMP contains adequate measures to detect impacts at an early stage and to prevent unacceptable adverse impacts in an expeditious manner;

(E) The measures within the proposed EMP minimize or avoid the potential for the establishment or spread of undesirable aquatic vegetation in the wetland or surface water body receiving supplemental hydration and, if such a potential exists, the EMP contains adequate measures to detect vegetative changes at an early stage and to prevent undesirable vegetative changes in an expeditious manner;

(F) The quantity of water needed for supplemental hydration is outweighed by the quantity of water made available for other uses;

(G) The quantity of water needed for supplemental hydration is reasonable compared to the unacceptable adverse impacts to be prevented;

(H) The unacceptable adverse impact to be prevented by supplemental hydration results in benefits that outweigh the potential for impacts caused by the additional withdrawal; and,

(I) The quantity of the water used for supplemental hydration is reasonable considering the proportion expected to percolate into the aquifer.

iii. Wetlands or other surface water bodies receiving supplemental hydration must have flow meters to measure the quantity of supplemental hydration water used at each site. This information shall be reported to the District as required by permit condition.

iv. Pursuant to Chapter 373, F.S., and Chapter 40D-2, F.A.C., permits may be conditioned to include aquifer regulatory levels intended to achieve compliance with one or more of the Chapter 40D-2, F.A.C., conditions for issuance, including 40D-2.301(1)(d), F.A.C., Minimum Flows and Levels criteria. The aquifer regulatory level that will be appropriate for any particular permit, considering all conditions for issuance, is the level that results from the more stringent condition.

v. If supplemental hydration with ground water is proposed pursuant to paragraph 4.3 A.1.a.i. and 4.3 A.1.a.ii, the applicant will be required to propose a Floridan aquifer regulatory level for each of the MFL wetlands (defined in 4.3 A.1.a.vi.(2)(A) below) or MFL surrogate wetlands not receiving supplemental hydration in the vicinity of the proposed water use permit. The aquifer regulatory level for each MFL wetland or MFL surrogate wetland not receiving supplemental hydration with ground water shall be the Floridan aquifer level that does not cause the Minimum Level to be exceeded on a long-term basis, based solely on withdrawal management. The aquifer regulatory level for MFL wetlands receiving supplemental hydration with ground water shall be the Floridan aquifer level taking into account the benefits of the hydration.

vi. The procedures described below are those applicable to the determination of an aquifer regulatory level relating to 40D-2.301(1)(d), F.A.C., where the Governing Board authorizes a quantity of Upper Floridan aquifer ground water pursuant to 4.3 A.1.a.i. where an applicant proposes prevention measures, and shall be determined for, and specified in, any permit issued as follows:

(1) The aquifer regulatory level is the long-term average potentiometric level that will not result in significant harm to a water body for which a Minimum Flow or Level has been established in 40D-8, F.A.C., taking into account the effects of prevention measures such as hydration on the impacted Minimum Flow or Level. The aquifer regulatory level for the Upper Floridan aquifer shall be proposed by the water use permit applicant with the permit application for review, modification as needed, and approval by the District as part of any permit issued. The aquifer regulatory level will be used to determine the annual average daily quantity for the permit that does not result in significant harm to water resources taking into account prevention measures such as hydration. The aquifer regulatory level is one of several long-term compliance

tools that are evaluated by the District, but is not a mechanism to control withdrawals on a short term basis. The aquifer regulatory level and the quantities granted based on this level shall be adjusted if data indicate that significant harm is occurring because of the withdrawals or if data indicates that additional withdrawals can be permitted without causing significant harm.

(2) The aquifer regulatory level for the Upper Floridan aquifer shall be calculated based on the relationship between the potentiometric level of the Upper Floridan aquifer and water levels in the surficial aquifer system and associated wetlands and lakes, taking into account the measures proposed by the applicant to prevent the significantly harmful impacts of withdrawals. The Floridan aquifer regulatory levels associated with MFL wetlands or MFL surrogate wetlands not receiving supplemental hydration, shall be equal to the Floridan aquifer level that does not cause the Minimum Level to be exceeded on a long-term basis, based solely on withdrawal management. The Floridan aquifer regulatory level associated with MFL wetlands that receive supplemental hydration shall be determined according to the following guidelines:

(A) Determine the historic average Upper Floridan aquifer potentiometric level in the vicinity of the wetland or lake for which a minimum wetland level or minimum lake level has been established in Chapter 40D-8, F.A.C. (Referred to hereafter as “MFL wetland” or “MFL lake”, as applicable). The historic average potentiometric level is estimated for each site as follows:

(i) If an Upper Floridan aquifer monitor well is located in the vicinity, and if the available pre-withdrawal potentiometric level data are sufficient to capture the expected long-term range of pre-withdrawal potentiometric levels, then the historic average potentiometric level is calculated by taking the average of the pre-withdrawal potentiometric level data.

(ii) If an Upper Floridan aquifer monitor well is located in the vicinity, and if the available pre-withdrawal potentiometric level data are not sufficient to capture the expected long-term range of pre-withdrawal potentiometric levels, then the historic average potentiometric level shall be estimated using best available data and methods. Methods may include correlation of the available pre-withdrawal potentiometric level data to historic potentiometric data in other areas of the region and estimating the historic average potentiometric level at the site in question using statistical analysis.

(iii) If no pre-withdrawal potentiometric level data for an existing Upper Floridan aquifer monitor well in the vicinity are available, then the historic average potentiometric level is determined by adding the absolute value of the estimated current average cumulative drawdown at the well to the current average potentiometric level of the well.

(iv) If no Upper Floridan aquifer monitor well exists in the vicinity of each MFL lake or MFL wetland, the historic average potentiometric level can be determined based on an evaluation of regional aquifer potentiometric level data, including potentiometric surface maps.

(B) Estimate the resulting cumulative Upper Floridan aquifer potentiometric level drawdown at the location of the MFL wetland or MFL lake utilizing acceptable ground water flow models or analytical techniques, resulting from the proposed and existing withdrawals, taking into account the effect of the prevention measures proposed by the permit applicant such that the drawdown together with the prevention measures will not cause

significant harm to the MFL wetland or MFL lake (hereinafter referred to as the “Resulting Drawdown”).

(C) Subtract the Resulting Drawdown from the historic average potentiometric level to calculate the aquifer regulatory level.

(D) The Resulting Drawdown shall be determined using industry-standard ground water flow models or analytical techniques, based on best available aquifer-characteristic information, simulating long-term average water use and hydrologic conditions.

vii. If the Board determines that reasonable assurances have been provided pursuant to 4.3 A.1.a., the Board shall authorize the additional quantity of water to be withdrawn.

b. For new quantities that affect a water body that is below Minimum Flow or Level - requests for withdrawals of new quantities of water that are projected to impact a water body which is below its minimum flow or level shall not be approved unless the new quantities are used solely for furthering the attainment of the objective set forth in the recovery strategy in Rule 40D-80.073, F.A.C.

c. Quantities Authorized to Be Withdrawn as of August 3, 2000.

i. Where above Minimum Flow or Level--For water bodies that are affected by the withdrawal and where the actual flow or level is at or above a Minimum Flow or Level, withdrawals shall be evaluated pursuant to 4.3 A.1.a. above.

ii. Where below Minimum Flow or Level--For water bodies that are affected by the withdrawal and where the actual flow or level is below a Minimum Flow or Level:

(A) Central System Wellfields.

The Central System Wellfields (i.e., Cosme-Odessa, Eldridge-Wilde, Section 21, South Pasco, Cypress Creek, Cross Bar Ranch, Starkey, Morris Bridge, Northwest Hillsborough Regional, Cypress Bridge, and North Pasco) are encompassed within a recovery strategy referenced in Rule 40D-80.073, F.A.C., and are controlled by the New Water Supply and Ground Water Reduction Agreement (Agreement) through the term of the Agreement. Recovery to Wetland and Lake Minimum Levels for wetlands and lakes described in and established in 40D-8.623(3) and 40D-8.624(12), F.A.C., is the objective of the recovery strategy under Rule 40D-80.073, F.A.C., and reductions in ground water withdrawals from the Central System Wellfields to reduce the impacts of withdrawals on wetlands and lakes is an objective of the Agreement. Therefore, withdrawals from these Wellfields shall not be required to comply with the Minimum Flows and Levels established within the area described in Section 4.3 A. during the term of the Agreement, nor shall Aquifer Regulatory Levels as set forth in Section 4.3 A.1.a.v. be applied to these Wellfields during the term of the Agreement.

(B) Other Existing Permittees as of August 3, 2000.

Permittees not subject to 4.3 A.2.b.i. above within this Area who apply for renewal shall reduce the impacts, if any, of their withdrawals, as set forth in Rule 40D-80.073(5), F.A.C., and therefore

are not required to comply with the Minimum Flows and Levels established within this Area through the period of the first phase of the recovery strategy, ending December 31, 2010.

B. Withdrawals Within the SWUCA That Affect Minimum Flows and Levels Water Bodies

GENERAL

In establishing Minimum Flows and Levels within the SWUCA as required by Section 373.042, F.S., and which are set forth in Chapter 40D-8, F.A.C., the District has determined that the actual flows and water levels for most of the water bodies for which Minimum Flows and Levels have been established are below the Minimum Flow and Level. The District is expeditiously implementing a recovery strategy for the SWUCA in keeping with the District's legislative mandates pursuant to Sections 373.036, 373.0361, 373.0421 and 373.0831, F.S. The SWUCA provisions of Chapter 40D-2, F.A.C., the Basis of Review For Water Use Permit Applications, and Chapter 40D-80, F.A.C., set forth the regulatory portion of the recovery strategy for the SWUCA. The District will conduct an annual assessment of water resource criteria and cumulative impacts and evaluate the status of the recovery strategy every five years prior to 2025, as provided in Rule 40D-80.074, F.A.C. Based on the annual assessment and five year evaluation, the District will revise this Section 4.3 B. in accordance with 40D-80.074, F.A.C. Compliance with Section 4.3 B. does not, by itself, satisfy the requirements of Chapter 40D-2, F.A.C., for applications requesting new withdrawals submitted on or after January 1, 2007.

As of January 1, 2007, within the SWUCA the District has established a Salt Water Intrusion Minimum Aquifer Level (SWIMAL) in the Most Impacted Area (MIA) as set forth in rule 40D-8.626, F.A.C., Minimum Flows on the Peace River as set forth in rule 40D-8.041, F.A.C., and Minimum Lake Levels as set forth in rule 40D-8.624, F.A.C. In accordance with the District's Minimum Flows and Levels priority list additional Minimum Flows and Levels will be established. These minimum flows and levels and the rules in Chapter 40D-2, F.A.C., that implement recovery are intended to manage those withdrawals that can have a direct effect on the Minimum Flows and Levels. Therefore, the effect of these Minimum Flows and Levels on applications for New Quantities will vary depending upon the impact of the withdrawal on a water body with an established Minimum Flow or Level. The District's evaluation of the potential impact of a proposed withdrawal will be based on factors such as the proximity of withdrawal to a Minimum Flow or Level water body, the volume of the withdrawal, the number of withdrawal points, and whether the withdrawal is from the upper Floridan, intermediate or surficial aquifer or is a direct surface water withdrawal.
New 1-1-07.

COMPLIANCE WITH RELATED PROVISIONS

Satisfying the conditions of this Section 4.3 Minimum Flows and Levels shall also fulfill the provisions of Section 4.5 of this Basis of Review For Water Use Permit Applications with respect to the affected Minimum Flow or Level water body.
New 1-1-07.

APPLICATIONS FOR NEW QUANTITIES OF WATER SUBMITTED ON OR AFTER JANUARY 1, 2007

Above Minimum Flow Or Level

For water bodies that are predicted to be impacted by the proposed withdrawal and where the actual flow or level is at or above a Minimum Flow or Level, withdrawals shall be limited to that quantity, as may be further limited by other provisions of 40D-2.301, F.A.C., and this Basis of Review, that does not cause the actual flow or level to fall below the Minimum Flow on a long-term average basis, or as compliance may be otherwise described in Rule 40D-8, F.A.C. For purposes of this Section 4.3 B., "long-term" shall have the meaning and be determined as set forth in Section 4.3 A. above.

New 1-1-07.

Below Minimum Flow Or Level

1. Existing Permits Within The SWUCA--Applications for the renewal or modification of a permit with no proposed increase in permitted quantities or change in Use Type will be evaluated to determine compliance with 40D-2.301, F.A.C., and this Basis of Review. When evaluating the reasonable-beneficial use of the water, emphasis will be given to reasonable water need, water conservation and use of Alternative Water Supplies. However, the existing impacts of permitted quantities on an MFL water body will not be a basis for permit denial because the SWUCA Recovery Strategy taken as a whole is intended to achieve recovery to the established minimum flows and levels as soon as practicable.

New 1-1-07.

2. Self-Relocation--The quantities potentially available to Self-Relocate include all of the used and unused reasonable-beneficial permitted quantity. The use of the quantities at the new location(s) can not increase impacts to Minimum Flow and Level water bodies and must meet all other applicable permitting criteria included in 40D-2, F.A.C., and this Basis of Review. If the Self-Relocation involves uses eligible for water conserving credits, the credit balance at the time of the Self-Relocation will be maintained. If the Self-Relocation is only for a portion of the permitted quantity, or involves Self-Relocation to multiple properties, the credit balance will be accordingly apportioned. Crop rotation, by planting and irrigating non-contiguous properties within the same locale in a structured, revolving fashion, is allowed under a single permit and is not considered Self-Relocation.

New 1-1-07.

3. Applications For New Ground Water Quantities Submitted On Or After January 1, 2007--The District will evaluate applications for New Quantities of ground water to determine compliance with this section 4.3 B. and all other 40D-2, F.A.C., rule criteria. Any application for a change to a Use Type not authorized in the permit shall be required to provide a Net Benefit. In addition, when land is mined and the land will be returned to the Use Type operation authorized under the Water Use Permit prior to mining, such activity does not constitute a change in Use Type or New Quantity and a Net Benefit will not be required. The District will not accept a waiver of the 90-day time clock for acting on permits set forth in Section 120.60, F.S., on the basis of a request to re-evaluate of the proposed withdrawal at a future time.

New 1-1-07.

a. Salt Water Intrusion Minimum Aquifer Level (SWIMAL)--All applications shall be evaluated for the impact on the SWIMAL described in 40D-8.626(2)(a), F.A.C, utilizing a cumulative assessment based upon best available information. A proposed withdrawal is determined to impact the SWIMAL if it causes any lowering (>0.0 feet) of the Floridan aquifer potentiometric surface within the MIA including the boundary of the MIA. If the evaluation indicates that a proposed withdrawal will result in increased impacts to the

SWIMAL, the District will approve the application only if the applicant proposes to implement a Net Benefit as described in paragraph 4. below.

New 1-1-07.

b. Upper Peace River--All applications shall be evaluated to determine whether the proposed withdrawal impacts ground water levels below the upper Peace River (as defined in 40D-2.021(10), F.A.C.). Where such an impact occurs, the proposed withdrawal is determined not to cumulatively impact upper Peace River flows if the current 10-year moving average monthly water level in the area is above 53.3 feet, NGVD (the median for the 10-year moving average monthly water level of available information during the period 1990 to 1999), and the proposed withdrawal individually meets the conditions of 40D-2.301(1)(b) and (c), F.A.C., and Basis of Review Section 4.2 C. If the above conditions are not met, the withdrawal can be authorized only if the applicant proposes to implement a Net Benefit as described in paragraph 4., below. However, the applicant has the option to reduce or redistribute the withdrawals to achieve no impact, in which case the withdrawal can be authorized. The current 10-year moving average ground water level will be calculated based upon District ground water monitoring stations in the ground water basin which best represent (adjustments for extraordinary local impacts on a well can be considered as to well location or water level effect) long-term trends in ground water levels affecting the upper Peace River, including ROMP 60, ROMP 59, ROMP 45, ROMP 30 and ROMP 31.

New 1-1-07.

c. Ridge Lakes--All applications shall be evaluated to determine whether the proposed withdrawal impacts ground water levels below Ridge Lakes (as defined in paragraph 40D-2.021(8), F.A.C.). Where such an impact occurs, the withdrawal is determined not to cumulatively impact Ridge Lakes levels if the current 10-year moving average monthly water level for the area encompassing the Ridge Lakes is above 91.5 feet, NGVD (the median for the 10-year moving average monthly water level of available information during the period 1990 to 1999), and the proposed withdrawal individually meets the conditions of 40D-2.301(1)(b) and (c), F.A.C., and Basis of Review Section 4.2 B. If the above conditions are not met, the withdrawal shall be authorized only if the applicant proposes to implement a Net Benefit as described in paragraph 4., below. However, the applicant has the option to reduce or redistribute the withdrawals to achieve no impact, in which case the withdrawal can be authorized. The current 10-year moving average ground water level will be calculated based on District ground water monitoring stations in the ground water basin which best represent (adjustments for extraordinary local impacts on a well can be considered as to well location or water level effect) long-term trends in Floridan ground water levels affecting the Ridge Lakes including Lake Alfred Deep, ROMP 28X, ROMP 57, ROMP 43XX and Coley Deep.

New 1-1-07.

d. No Impact to Salt Water Intrusion Minimum Aquifer Level, Upper Peace River and Ridge Lakes-If the proposed withdrawal is determined to comply with 40D-2, F.A.C., and this Basis of Review, the withdrawal shall be authorized.

New 1-1-07.

4. Net Benefit

If an applicant must implement a Net Benefit to obtain the permit, a permit shall be issued if the applicant provides reasonable assurance that implementation of its proposed Net Benefit will mitigate the predicted impacts by one or more of the options listed below. In order to provide a

Net Benefit, the measures proposed by the applicant must offset the predicted impact of the proposed withdrawal and also provide an additional positive effect on the water body equal to or exceeding 10% of the predicted impact. For example, if the predicted impact on a water body is 1.0 foot, the mitigation must offset the 1.0 foot impact and provide another 0.1 foot (i.e., 10% of 1.0 foot) of positive effect. There are three forms of Net Benefit, including 1) mitigation plus recovery, 2) use of quantities created by District water resource development projects, and 3) Ground Water Replacement Credits, as described below.

New 1-1-07.

a. Mitigation Plus Recovery--Mitigation plus recovery involves one or more of the following:

(1) Permanently retiring from use the reasonable-beneficial, historically used quantity associated with one or more permits within the SWUCA that impacts the same Minimum Flow and Level water body. Used quantities are those permitted quantities of water that the District determines have been deemed reasonable-beneficial and historically used by a permittee, but not including Water-Conserving Credits obtained pursuant to 40D-2.621, F.A.C. Used quantities are determined based on documentation previously submitted by a permittee and available crosschecks. The types of documentation submitted by permittees include seasonal/annual crop reports, metered data, and other information. Crosschecks include aerial photography, receipts for supplies, equipment, and services, property appraisers records and other methods. For small permits below thresholds for crop reporting and metering, aerial photography and other methods will be used to determine quantities, or

(2) Recharging the aquifer and withdrawing water such that there remains a net positive impact on the Floridan aquifer potentiometric surface at least 10% greater than the impact of the proposed withdrawal, or

(3) Undertaking other actions to offset the proposed impact of the withdrawal plus 10%.

Mitigation plus recovery must be in reference to the MFL water body that would be impacted by the proposed withdrawals, and must either precede or be coincident with any new permitted withdrawals.

New 1-1-07.

b. Use of Quantities Created by District Water Resource Development Projects As A Net Benefit.

The District anticipates that its water resource development projects may result in the development of new quantities above and beyond the quantities needed to achieve recovery to Minimum Flows and Levels. All or a portion of these new quantities that are not reserved or otherwise designated for recovery will be made available to permit applicants and used as a Net Benefit to offset proposed withdrawals that would impact an MFL water body.

If an applicant is required to provide a Net Benefit as described in section 3. above and has contributed to a District water resource development project, the applicant may apply for quantities made available through a District water resource development project as a Net Benefit, provided the applicant demonstrates that:

(1) The proposed withdrawal affects the same MFL water body source associated with the water resource development project;

(2) The quantity developed in excess of the quantity reserved or otherwise designated for the Minimum Flow or Level has been determined; and

(3) The proposed Net Benefit quantities will not interfere with quantities reserved or otherwise designated by the District for water resource development.

New 1-1-07.

c. Ground Water Replacement Credit in the SWUCA

To reduce ground water withdrawals, a Ground Water Replacement Credit is proposed as an incentive for water users to provide water use permit holders with alternative supplies. The holder of a Ground Water Replacement Credit can use the Credits to provide a Net Benefit in order to withdraw New Quantities. The process to obtain a Ground Water Replacement Credit is set forth below:

(1) A Ground Water Replacement Credit is created when an entity (Supplier) provides an alternative water supply, not previously delivered to another user to offset ground water withdrawals, that offsets actual withdrawals by an existing permit holder (Receiver) that impact a Minimum Flow or Level water body. A Ground Water Replacement Credit will be available to either the Supplier or the Receiver, or both.

(2) A Ground Water Replacement Credit will be issued for an amount equal to a specified percent of the amount that is offset that was reasonable-beneficial historically used. For those offsets made prior to January 1, 2000, but within the applicant's current permit term, the Credit will be equal to 50% of the offset. For those offsets made after January 1, 2000, the Credit will be equal to 90% of the offset.

(3) The Supplier and Receiver shall apply to the District for the credit and indicate to the District which entity should obtain the credit quantity, or whether the credit quantity will be divided between them or assigned to a third party.

(4) The District will set aside the ground water quantities that are discontinued as a result of the offset by alternative water supplies in a standby permit that will be issued to the Receiver to allow withdrawal of all or a portion of such quantities in the event that the alternative water supply is interrupted, becomes unsuitable or is decreased.

(5) The Ground Water Replacement Credit will exist for only so long as the Receiver maintains its use of the alternative water supplies. The Credit will remain available if the Receiver transfers the standby permit to a new owner at the same site who continues the same water use with the alternative water supplies.

(6) Only withdrawals that meet the permitting criteria of Chapter 40D-2, F.A.C., and this Basis of Review, including Minimum Flows and Levels criteria, may be made pursuant to a Ground Water Replacement Credit.

(7) Reclaimed water suppliers shall not be eligible for a Ground Water

Replacement Credit when they redirect reclaimed water from existing reclaimed water users to other reclaimed water users and such redirection causes an existing reclaimed water user to reinstate permitted standby ground water withdrawals, unless the reclaimed water provider can demonstrate that the cumulative effect of such redirection will be a

greater reduction in ground water withdrawals and will contribute more the recovery of MFL waterbodies in the SWUCA than would otherwise occur absent of the redirection.

New 1-1-07.

5. Surface-Water Withdrawals Within the SWUCA

The District will not issue permits for surface-water withdrawals from streams or lakes where the Minimum Flow or Level is not achieved unless the applicant demonstrates that:

- or;
- a. The withdrawal will not adversely affect the Minimum Flow or Level,
 - b. A Net Benefit, as described in paragraph 4. above, can be implemented.

New 1-1-07.

C. For areas not subject to 4.3 A. or B. above, water withdrawals must not cause:

1. Lake levels to be reduced below the applicable Minimum Level established in Chapter 40D-8, F.A.C.
2. Streamflow to be reduced below the Minimum Flow as established in Chapter 40D-8, F.A.C.
3. Potentiometric surface or water-table levels to be reduced below the Minimum Level established in Chapter 40D-8, F.A.C.

History Note: 4.3 Amended 8-3-00; 4.3A. New 8-3-00; 4.3B Amended 8-3-00. Amended 1-1-07.