

Instream Flow Protection Legal Language

Example language for legal mandate to protect instream flows, with an emphasis on protection of natural variation of flows and water levels.

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Rhode Island

DEPARTMENT OF ENVIRONMENTAL MANAGEMENT Water Resources WATER QUALITY REGULATIONS

Rule 6 - B. These regulations apply to all waters of the State, all systems or means of wastewater treatment, including sewers, all discharges into surface waters, all activities which will likely impact water quality [and/or activities that will likely cause or contribute to flow alterations](#). These regulations shall also apply to those activities regulated by the federal government, [other state agencies](#), programs within the Department and/or local governmental entities. All departmental regulations should be construed to be consistent and/or complementary and any perceived conflicts are unintentional. Should a perceived conflict arise between or among these regulations and the requirements imposed by the other departmental regulations or other governmental entities, the most stringent requirement shall govern. (page 3)

A. Purpose. A water quality standard defines the water quality goals of a surface water body, or portion thereof, by designating the use or uses of the water and by setting criteria necessary to protect the uses. Water quality standards are intended to protect public health, safety and welfare, enhance the quality of water and serve the purposes of the Clean Water Act and Chapter 46-12 of the General Laws of Rhode Island. "Serve the purposes of the Act" (as defined in Section 101(a)(2) and 303(c) of the Clean Water) means that water quality standards should, whenever attainable, provide water quality, [including quantity](#), for the protection and propagation of fish and wildlife and for recreation in and on the water and take into consideration their use and value as public water supplies, propagation of fish and wildlife, recreation in and on the water, agricultural, industrial, and other purposes including navigation. (page 10)

E. Applicable Conditions - The water quality standards apply under the most adverse conditions, as determined by the Director according to sound engineering and scientific practices as defined below. For non-flowing freshwaters, most adverse conditions will be defined on a case-by-case basis.

(1). For activities that [will likely cause or contribute to flow alterations](#), streamflow conditions must be adequate to support existing and designated uses. (page 14)

Connecticut

Public Act No. 05-142

AN ACT CONCERNING THE MINIMUM WATER FLOW REGULATIONS

- regulations shall: (1) **Apply to all river and stream systems** within this state; (2) preserve and protect the **natural aquatic life, including anadromous fish, contained within such waters**; (3) preserve and protect the **natural and stocked wildlife dependent upon the flow of such water**; (4) promote and protect the usage of such water for public recreation; (5) **be based, to the maximum extent practicable, on natural variation of flows and water levels** while providing for the needs and requirements of public health, flood control, industry, public utilities, water supply, public safety, agriculture and other lawful uses of such waters; and (6) **be based on the best available science, including, but not limited to, natural aquatic habitat, biota**, subregional basin boundaries, areas of stratified drift, stream gages and flow data, locations of registered, permitted, and proposed diversions and withdrawal data reported pursuant to section 22a-368a, locations where any dams or other structures impound or divert the waters of a river or stream and any release made therefrom, and any other data for developing such regulations or individual management plans.

Connecticut

TITLE 26 FISHERIES AND GAME

DEPARTMENT OF ENVIRONMENTAL PROTECTION

MINIMUM STREAM FLOW STANDARDS

**Required Daily Average Releases in Cubic Feet
per Second per Square Mile of Drainage Area
Percent of Safe Yield Utilized Existing Impoundments**

	0	75	85	95	100	
100-						-100
	.20	.15	.10	.05	.01	
50-						- 50
	.15	.10	.05	.01	.01	
20-						- 20
	.10	.05	.01	.01	.01	
10-						- 10
	.05	.01	.01	.01	.01	
5-						- 5
	.01	.01	.01	.01	.01	
0-						- 0

New Impoundments

100-						-100
	.25	.20	.15	.10	.05	

50-						- 50
	.20	.15	.10	.05	.02	
10-						- 10
	.15	.10	.05	.02	.02	
5-						- 5
	.10	.05	.02	.02	.02	
0-						- 0

Texas
WATER CODE
CHAPTER 16.PROVISIONS GENERALLY APPLICABLE TO WATER
DEVELOPMENT

SUBCHAPTER C.PLANNING
Sec.A16.051.AA STATE WATER PLAN: DROUGHT, CONSERVATION,
DEVELOPMENT, AND MANAGEMENT; EFFECT OF PLAN.

Not later than January 5,2002,and before the end of each successive five-year period after that date, **the board shall prepare, develop, formulate, and adopt a comprehensive state water plan that incorporates the regional water plans** approved under Section 16.053.The state water plan **shall provide for the orderly development, management, and conservation of water resources** and preparation for and response to drought conditions, in order that sufficient water will be available at a reasonable cost to ensure public health, safety, and welfare; further economic development; and protect the agricultural and natural resources of the entire state.

(f) **The legislature may designate a river or stream segment of unique ecological value.** This designation solely means that a state agency or political subdivision of the state may not finance the actual construction of a reservoir in a specific river or stream segment designated by the legislature under this subsection.

(g) The legislature may designate a site of unique value for the construction of a reservoir. A state agency or political subdivision of the state may not obtain a fee title or an easement that would significantly prevent the construction of a reservoir on a site designated by the legislature under this subsection.

Sec.16.059. COLLECTION OF INSTREAM FLOW DATA; CONDUCT OF STUDIES.

(a) The Parks and Wildlife Department, the commission, and the board, in cooperation with other appropriate governmental agencies, **shall jointly establish and continuously maintain an instream flow data collection and evaluation program and shall conduct studies and analyses to determine appropriate methodologies for determining flow conditions in the state 's rivers and streams necessary to support a sound ecological environment.** Any stream that consists only of floodwaters and is dry more than 75 percent of the year is exempt from this section.

Florida

(Excerpt from Southwest Florida Water Management District Water Management Plan, July 2005; <http://www.swfwmd.state.fl.us/about/watermanagementplan/>)

Water management in Florida involves the challenge of balancing sometimes competing priorities to provide adequate water supplies for human needs, appropriate flood protection, and sound management of water quality and natural systems. The State's five water management districts (WMDs) and the Florida Department of Environmental Protection (DEP) are charged with meeting this challenge and addressing the unique water resource issues of the various regions of the state. Federal, state, regional and local agencies responsible for land planning and development also have a significant role to play in protecting water-related resources. The District Water Management Plan (Plan) provides a 20-year comprehensive guide to the Southwest Florida Water Management District (SWFWMD or District) in carrying out its water resource management responsibilities in water supply, flood protection, water quality and natural systems. This long-range guide is all encompassing, under which strategies and other shorter term planning efforts fall, assuring consistency with operational aspects of the District. This relationship is further detailed in Chapter VI (Procedures for Plan Development).

Chapter 373.036, Florida Statutes (F.S.), requires each of the State's water management districts to prepare and update at least every five years a District Water Management Plan. Specific intent for this planning is further delineated in the State Water Resource Implementation Rule (Chapter 62-40, Florida Administrative Code (F.A.C.)), which has recently undergone a significant update. The District's plans, programs and rules will be reviewed to ensure consistency with the revised Rule. The Plan serves a number of purposes, including:

1. To implement the goals and policies of the State Comprehensive Plan;
2. To provide long-range guidance for decisions and actions of the District through the establishment of regional water management goals and policies;
3. To form a key component of the Florida Water Plan;
4. To provide a regional basis and perspective for the coordination of issues relating to water management;
5. To provide technical assistance to local governments, regional planning councils and community interest groups;
6. To identify specific geographic areas where water resource problems or issues exist, and strategies to address them; and
7. To strengthen accountability to the public through establishment of performance measures.

In the formulation of this Plan, the Governing Board has given due consideration to:

1. The attainment of maximum reasonable-beneficial use of water resources.
2. The maximum economic development of the water resources consistent with other uses.
3. The management of water resources for such purposes as environmental protection, drainage, flood control, and water storage.
4. The quantity of water available for application to a reasonable-beneficial use.
5. The prevention of wasteful, uneconomical, impractical, or unreasonable uses of water resources.
6. Presently exercised domestic use and permit rights.
7. The preservation and enhancement of the water quality of the state.

8. The state water resources policy as expressed by Chapter 373, F.S. (Section 373.036(2)(d), F.S.).

Florida

Title XXVIII

NATURAL RESOURCES; CONSERVATION, RECLAMATION, AND USE

373.036 Florida water plan; district water management plans

2) DISTRICT WATER MANAGEMENT PLANS

(a) Each governing board shall develop a district water management plan for water resources within its region, which plan **addresses water supply, water quality, flood protection and floodplain management, and natural systems**. The district water management plan shall be based on **at least a 20-year planning period**, shall be developed and revised in cooperation with other agencies, regional water supply authorities, units of government, and interested parties, and shall be **updated at least once every 5 years**. The governing board shall hold a public hearing at least 30 days in advance of completing the development or revision of the district water management plan.

373.042 Minimum flows and levels

(1) Within each section, or the water management district as a whole, the department or the governing board shall establish the following:

(a) **Minimum flow for all surface watercourses in the area. The minimum flow for a given watercourse shall be the limit at which further withdrawals would be significantly harmful to the water resources or ecology of the area.**

(b) **Minimum water level. The minimum water level shall be the level of groundwater in an aquifer and the level of surface water at which further withdrawals would be significantly harmful to the water resources of the area.**

The minimum flow and minimum water level shall be calculated by the department and the governing board using the best information available. When appropriate, minimum flows and levels may be calculated to reflect seasonal variations. The department and the governing board shall also consider, and at their discretion may provide for, the protection of nonconsumptive uses in the establishment of minimum flows and levels.

373.0421 Establishment and implementation of minimum flows and levels

(1) ESTABLISHMENT.--

(a) *Considerations.*--When establishing minimum flows and levels pursuant to s. [373.042](#), the department or governing board shall consider changes and structural alterations to watersheds, surface waters, and aquifers and the effects such changes or alterations have had, and the constraints such changes or alterations have placed, on the hydrology of an affected watershed, surface water, or aquifer, provided that nothing in this paragraph shall allow significant harm as provided by s. [373.042](#)(1) caused by withdrawals.

Maine

Title 38, §470-E

Title 38, §470-E

The board shall adopt rules by January 1, 2005 that establish water use standards for **maintaining in-stream flows and** GPA lake or pond **water levels that are protective of aquatic life** and other uses and that establish criteria for designating watersheds most at risk from cumulative water use. Standards adopted under this section must be **based on the natural variation of flows and water levels**, allowing variances if use will still be protective of water quality within that classification.