

2014 WATER MANAGEMENT DISTRICT UPDATE

Prepared by the South Florida Water Management District in coordination with the Southwest Florida Water Management District and the St. Johns River Water Management District.

I. LEGISLATIVE UPDATE

A. Lobbyist Registration (SB 846).

The bill requires persons who lobby water management districts (“WMD”) to annually register with the WMD as a lobbyist. Registration must include a statement signed by the lobbyist’s principal stating that the registrant is authorized to lobby the principal, identify the registrant’s main business pursuant to a classification system approved by the WMD, and disclose the existence of any direct or indirect business or financial relationship between the lobbyist and any officer or employee of the WMD. The bill provides that the term “lobbies” must be interpreted and applied consistently with the rules of the Florida Commission on Ethics (Commission) implementing section 112.3215, Florida Statutes, relating to executive branch lobbying.

Lobbyist registrations must be made available to the public and a database of currently registered lobbyists and principals must be available on the WMD’s website.

SB 846 was signed into law on June 20, 2014, and can be found at chapter 2014-183, Laws of Florida. This law became effective on July 1, 2014.

B. Reclaimed Water (SB 536).

The bill requires the Florida Department of Environmental Protection (“FDEP”), in coordination with stakeholders, to conduct a study and submit a report to the Legislature about expanding the beneficial use of reclaimed water, stormwater, and excess surface water. The report must:

- Identify factors that inhibit expansion of the beneficial use of these sources and how those factors can be eliminated or reduced;
- Identify actions leading to the efficient use of reclaimed water;
- Identify environmental, engineering, health, perception and financial constraints to expansion;
- Identify geographic areas where the use of traditional sources are limited;
- Recommend permit incentives; and
- Determine feasibility of regional storage features on public or private lands.

In order to generate the report, the FDEP must hold two public meetings. The FDEP must allow public comment before the report is finalized. The report must be submitted to the Governor, President of the Senate and Speaker of the House by December 1, 2015.

SB 536 was signed into law on June 13, 2014, and can be found at chapter 2014-79, Laws of Florida. This law became effective on July 1, 2014.

C. Economic Development (HB 7023).

Under this bill, permits issued by a WMD under Part IV of Chapter 373, Florida Statutes, which have expiration date from January 1, 2014, through January 1, 2016, are extended or renewed for a period of two years after their previously scheduled expiration date. The commencement and completion dates for any required mitigation associated with a phased construction period are also extended. The permittee must notify the WMD in writing by December 31, 2014, that it intends to use the extension. The extension does not apply to a permittee determined to be in significant noncompliance with the permit as established by the issuance of a warning letter or notice of violation, the initiation of formal enforcement, or other equivalent action by the WMD. Permits extended under this law will continue to be governed by the rules in effect at the time the permit was issued, including modification of the permit which lessens environmental impacts.

HB 7023 was signed into law on June 20, 2014, and can be found at chapter 2014-218, Laws of Florida. This law became effective on July 1, 2014.

D. Agricultural Water Policy (HB 7091).

The bill provides that lands classified for assessment purposes as agricultural that participate in a dispersed water storage program pursuant to a contract with the FDEP or a WMD, which requires flooding of land, shall continue to be classified as agricultural lands and assessed as nonproductive.

When an agreement is entered into between the Florida Department of Agriculture and Consumer Services (“FDACS”) and a private landowner to implement best management practices (“BMP”) pursuant to section 403.067(7)(c), Florida Statutes, a baseline for wetlands conditions may be established at the option of the landowner. The proposed baseline shall be submitted to FDACS, FDEP and the WMD, as applicable to review within 45 days.

The Florida Forest Service may cooperate with state agencies, WMDs and other governmental entities in the designation and dedication of lands that are suitable for forestry purposes. The WMDs have not previously participated in the designation and dedication of lands that are suitable for forestry purposes. However, the WMDs currently participate in the designation of land, through the permit process, that is suitable for conservation purposes. The statute on conservation easements provides that conservation easements are appropriate to maintain property in its wooded condition.

HB 7091 was signed into law on June 13, 2014, and can be found at chapter 2014-150, Laws of Florida. This law became effective on July 1, 2014.

II. RULEMAKING UPDATE

A. CUP Consistency Rule.

The FDEP led a statewide effort (referred to as CUPcon) to improve consistency in the consumptive use permitting programs implemented by the WMDs. The CUPcon goals included: (1) making the consumptive use permitting program less confusing for applicants; (2) treating applicants equitably statewide; (3) providing consistent protection of the environment; (4) streamlining the process; and (5) incentivizing behavior that protects water resources. The key changes to the rules include:

- Incorporation of updates to Chapter 62-40, Florida Administrative Code;
- Revision of permit types to include: (1) General Permits by Rule for landscape irrigation, short-term dewatering and closed-loop systems; (2) Noticed General Permits; and (3) Individual Permits for those that do not qualify for a General Permit by Rule or Noticed General Permit;
- Revision of standard public water supply conservation plan and inclusion of goal based plans;
- Consistent standard permit conditions with the other WMDs and updating existing permit conditions;
- Reorganization of Applicant’s Handbook (formerly Basis of Review);
- Inclusion of semi-annual pumpage reporting instead of quarterly reporting; and
- Incorporation of standardized application and compliance forms.

Public workshops were held throughout the state. A Statement of Estimated Regulatory Costs (“SERC”) was prepared to determine the regulatory impact of the CUPcon amendments. The SERC indicated the amendments will not have an adverse impact on economic growth; on permittees, small business, or small governments; or increase regulatory costs.

In May 2014, the South Florida Water Management District (“SFWMD”) Governing Board authorized the publication of a notice of proposed rule with automatic adoption of the rule if no comments or request for public hearing are received. The Southwest Florida Water Management District’s (“SWFWMD”) CUPcon rulemaking, including amendments to Chapters 40D-1, 40D-2, 40D-8, 40D-21, 40D-80, Florida Administrative Code, and the Applicant’s Handbook, were filed for adoption and became effective on May 19, 2014.

B. Statewide Environmental Resource Permit (SWERP) Rule.

Section 373.4131, Florida Statutes, required FDEP in coordination with the five WMDs to develop statewide environmental resource permitting (“SWERP”) rules. Weekly, day-long working sessions were held among FDEP and all of the WMDs to draft rule language for a SWERP rule. The purpose of the rule is to promote consistency and reduce regulatory burdens while providing the same level of protection to the environment. Joint public workshops were held in July, August, September, and December 2012, and February 2013.

The SWERP rules became effective October 1, 2013. The WMDs have been conducting many internal and public training classes since then. FDEP has also held public training.

We are now beginning SWERP Phase II, a second, anticipated phase of “clean-up” rulemaking that will address multiple issues, including amendments to the Applicant’s Handbook, forms to incorporate streamlining measures, and revising the Joint Application to add the United States Army Corps of Engineers (“USACE”) information items. Weekly meetings are again resuming with a goal of adopting amendments in the fall.

C. Other Rulemaking.

1. SFWMD: Water Quality (40E-4.091, Florida Administrative Code).

During the SWERP rulemaking process, the SFWMD received public comments from the Conservancy of Southwest Florida (“Conservancy”) requesting that water quality rulemaking be expanded. The Conservancy’s main request is that it be expanded to codify a guidance memo on impaired waters into the SFWMD’s Environmental Resource Permit (“ERP”) Applicants Handbook II. The SFWMD declined to do this because it is beyond the legislative directive for the SWERP rulemaking. However, in response, the SFWMD amended its regulatory plan to include rulemaking to address this concern.

Authority to initiate rule development was requested from the SFWMD Governing Board in October 2013. Thereafter, notice was published. Three workshops were held in Fort Myers on November 6, in Orlando on November 12, and in West Palm Beach on November 18, 2013. Rule language was drafted and distributed to stakeholders in February 2014. The rule was presented to the SFWMD’s Water Resources Advisory Commission in March 2014. Authority to initiate rulemaking was requested in April. The rule adoption hearing will be held in June.

2. SFWMD: Biscayne Bay Water Reservation Rulemaking (40E-10.061, Florida Administrative Code).

The Water Reservation for the Comprehensive Everglades Restoration Plan (“CERP”) Biscayne Bay Coastal Wetlands Phase I Project protects existing surface water flows to Biscayne Bay released through coastal canal structures located within the Phase I Project area. After extensive stakeholder coordination, including three rule development workshops, three presentations to the SFWMD’s Water Resources Advisory Commission, and two updates to the Governing Board, the Governing Board adopted the rule language at the June 2013 Governing Board meeting. The rule became effective July 21, 2013.

3. SWFWMD: Contractor Disbarment Rule.

Section 373.610, Florida Statutes, authorizes a WMD to suspend a contractor, on either a temporary or permanent basis, through the adoption of rules that must specify: a) the circumstances and conditions that constitute a materially breached contract, and b) the conditions that constitute the period for temporary or permanent suspension, and for reinstatement. On September 24, 2013, SWFWMD’s Governing Board approved initiation of rulemaking to allow the suspension of a contractor from working with SWFWMD when the contractor has materially breached its contract with SWFWMD, and will establish a process for suspending a contractor from working with SWFWMD in those circumstances.

III. LITIGATION UPDATE

- A. South Florida Water Management District v. RLI Live Oak, LLC, No. 5D 11-2329 (Fla. 5th DCA Aug. 31, 2012), No. SC12-2336 (Fla. May 22, 2014).

In a unanimous opinion, written by Justice LaBarga, the Florida Supreme Court found that when a statute authorizes a state agency to recover civil penalties in a “court of competent jurisdiction,” but does not specify the agency’s burden of proof, the burden of proof is preponderance of the evidence and not clear and convincing evidence. In the trial court, the SFWMD prevailed in an enforcement case against RLI for unauthorized filling of wetlands, and was awarded \$81,000 in civil penalties. RLI appealed to the Fifth District Court of Appeal. The district court affirmed findings of liability, but reversed the portion of the judgment imposing civil penalties, concluding that the trial court erred by relying on a preponderance of the evidence standard instead of the clear and convincing evidence standard. On appeal, the Supreme Court reversed, distinguishing its previous decisions which held that an agency seeking an “administrative fine” was required to meet the clear and convincing standard.

- B. St. Johns River Water Management District v. Koontz, 39 Fla. L. Weekly D925a (Fla. 5th DCA April 30, 2014).

Mr. Koontz applied for a permit from the St. Johns River Water Management District (“SJRWMD”) to dredge and fill part of his property. The permit application proposed the filling of three and one-half acres of wetlands within a riparian habitat protection zone. To offset the wetland impacts, Mr. Koontz proposed to preserve the rest of his property (about 11 acres) as mitigation. Under the mitigation guidelines in place at the time, Mr. Koontz’s proposal was not sufficient. The mitigation guidelines required at least 10 acres of preservation mitigation for each wetland acre destroyed. The SJRWMD suggested that Mr. Koontz modify his permit application to include additional mitigation, such as enhancing other wetlands. The final order encouraged Mr. Koontz to choose the location of additional mitigation for his project: “enhancement on other properties within the [Econlockhatchee] basin could also be developed and proposed by Koontz.” Mr. Koontz, however, disagreed with the SJRWMD’s conclusions about the sufficiency of his proffered mitigation and declined to propose additional mitigation. Therefore, the SJRWMD denied the pending application.

Mr. Koontz did not seek an administrative hearing under section 120.57, Florida Statutes, nor did he appeal the final orders under section 120.68, Florida Statutes. Instead, Mr. Koontz brought an inverse condemnation claim asserting an improper exaction of his real property by the SJRWMD. The circuit court concluded that the requirement for additional off-site mitigation resulted in a “regulatory taking” of Mr. Koontz’s property and awarded \$327,500, plus interest, as “just compensation.”

The exaction taking of Mr. Koontz’s real property was upheld by the Fifth District Court of Appeal. St. Johns River Water Mgmt. Dist. v. Koontz, 5 So.3d 8 (Fla. 5th DCA 2009). The Florida Supreme Court accepted jurisdiction and quashed the Fifth District’s decision. St. Johns River Water Mgmt. Dist. v. Koontz, 77 So.3d 1220, 1231 (Fla. 2011). The United States Supreme Court granted certiorari. Koontz v. St. Johns River Water Management District, 133 S. Ct. 2586 (2013).

Of particular significance to the circuit court's inverse condemnation judgment is the United States Supreme Court's holding that there was no exactions taking: "Where the permit is denied and the condition is never imposed, nothing has been taken," *Koontz*, 133 S. Ct. at 2597. As an adjunct to its inverse condemnation ruling, the Court expanded property rights protection by holding that "the government's demand for property from a land-use permit applicant must satisfy the requirements of *Nollan* and *Dolan* even when the government denies the permit and even when its demand is for money." *Koontz*, 133 S. Ct. at 2586, 2603. Thus, in cases where there is an "excessive demand but no taking," whether money damages are available is a question of the cause of action on which the landowner relies. *Id.* at 2597. The United States Supreme Court decision recognized several issues that potentially remained open on remand to the Florida courts, including "how concrete and specific a demand must be to give rise to liability" and whether section 373.617, Florida Statutes, authorizes plaintiffs to recover damages for unconstitutional conditions claims. Significantly, the United States Supreme Court stated that its opinion "expresses no view on the merits of [Koontz's] claim."

The United States Supreme Court remanded the case to the Florida Supreme Court for further proceedings consistent with its decision, and the Florida Supreme Court, in turn, remanded the case to the Fifth District Court of Appeal "for further proceedings consistent with" the United States Supreme Court's decision. *St. Johns River Water Mgmt. Dist. v. Koontz*, 129 So.3d 1069 (Fla. 2013).

In *St. Johns River Water Management District v. Koontz*, 39 Fla. L. Weekly D925a (Fla. 5th DCA April 30, 2014), a panel majority affirmed the trial court's judgment of inverse condemnation and award of just compensation. The Fifth District's conclusion that an "exactions taking" may occur "even when the unconstitutional condition is refused and the permit is denied," seems to be inconsistent with the United States Supreme Court's holding that "[w]here the permit is denied and the condition is never imposed, nothing has been taken." *Koontz*, 133 S. Ct. at 2597; *see id.* at 2596 ("[e]xtortionate demands for property in the land-use permitting context run afoul of the Takings Clause *not because they take property* but because they impermissibly burden the right not to have property taken without just compensation.") (emphasis added). The Fifth District's decision to uphold an award of just compensation also appears to be inconsistent with the United States Supreme Court's holding that that "the Fifth Amendment mandates a particular remedy—just compensation—only for takings." *Koontz*, 133 S. Ct. at 2597.

SJRWMD petitioned the Florida Supreme Court for review because of these conflicts. It appears that the panel majority missed the distinction drawn by the United States Supreme Court between inverse condemnation claims and claims that government acts (demands here) run afoul of the Takings Clause without taking property. As of the date of this writing, Mr. Koontz has not filed his jurisdictional answer brief and the Florida Supreme Court has not decided whether to accept jurisdiction.

C. United States of America (FEMA) ex rel. Lesinski v. South Florida Water Management District, No. 12-16082 (11th Cir. 2014), cert. denied, No. 13-1207 (U.S. May 19, 2014).

In this case, the Eleventh Circuit Court of Appeals solidified the WMDs' entitlement to Eleventh Amendment immunity. A former employee had alleged the SFWMD violated the False Claims Act by claiming over \$24 million in hurricane related reimbursements from the Federal

Emergency Management Agency (“FEMA”). The case was dismissed upon finding the SFWMD is an arm of the State for purposes of the False Claims Act and, therefore, not subject to suit under it. That finding is significant not only for the case, but because “arm of the state” analysis under the False Claims Act is the same as that under the Eleventh Amendment. The Eleventh Amendment precludes many types of federal suits against the WMDs and, more importantly, many forms of relief that otherwise might be available from the federal courts. On January 2, 2014, the Eleventh Circuit Court of Appeals affirmed, and on May 19, 2014, the United States Supreme Court denied review on certiorari.

- D. Florida Wildlife Federation v. United States Environmental Protection Agency, No. 4:08cv324-RH/CAS (N.D. Fla. January 7, 2014), No. 14-10987 (11th Cir.) – Numeric Nutrients.

In 2008, several conservation groups sued the Environmental Protection Agency (“EPA”) to impose federal Numeric Nutrient Criteria (“NNC”) in Florida, arguing the FDEP was taking too long. The SFWMD intervened to support EPA in denying the need for federal criteria, but, in 2009, EPA changed its position and issued a formal determination that the State’s effort was deficient and that federal NNC were needed for all Florida waters. That determination triggered a duty for EPA to set federal standards. EPA quickly entered into a consent decree that established a rulemaking schedule to develop federal criteria. In 2010, EPA finalized a first phase (Phase 1) of NNC for springs, lakes, and streams. With respect to streams, EPA included canals but excluded the South Florida region. EPA also imposed, as part of its stream criteria, “Downstream Protection Values” (“DPVs”), which place a nutrient limit where streams enter lakes.

Federal rule challenges were filed and, in 2012, the court invalidated EPA’s stream criteria and DPVs for unimpaired lakes, but upheld the remainder, including DPVs for impaired lakes. During appeals, the State adopted its own criteria. In light of the State’s progress, EPA agreed to withdraw its federal criteria altogether. In early January 2014, the consent decree was modified to remove EPA’s obligation to impose federal standards including DPVs. On March 5, 2014, Gulf Restoration Network filed a notice of appeal challenging the consent decree’s modification. That appeal is ongoing. The initial briefs are due by the end of June.

- E. Catskill Mountain Chapter of Trout Unlimited, Inc. v. United States Environmental Protection Agency, No. 08-cv-5606 and 08-cv-8430 (SD NY Mar. 28, 2014), No. 14-1823 (2d Cir.) – National Pollutant Discharge Elimination System (NPDES).

In 2008, after fifteen years of litigation over the applicability of the Clean Water Act (“CWA”) National Pollutant Discharge Elimination System (“NPDES”) permits to the SFWMD’s pumping stations, EPA issued a formal rule supporting the SFWMD’s position that the permits are not required to merely transfer water. States and organizations from around the nation filed numerous petitions challenging EPA’s rule in both district and appellate courts. Ultimately, those challenges proceeded before a New York Federal Court. The SFWMD and others intervened.

Multiple motions and cross-motions for summary judgment were briefed throughout the spring and summer of 2013. On March 28, 2014, the Southern District Court of New York ruled against EPA vacating the rule and remanding to the EPA to modify it or provide a more reasoned

explanation for the rule. The EPA and intervenor defendants, SFWMD included, appealed to the Second Circuit Court of Appeals.

F. Teitelbaum v. South Florida Water Management District, No. 04-21282 CA 01 (Fla. 11th Cir. Ct. Mar. 27, 2014), No. 3D14-963 (Fla. 3d DCA).

In a condemnation blight case in Miami-Dade County, 133 landowners in the Bird Drive Basin, Miami, sued the SFWMD for inverse condemnation as a result of their properties being targeted for acquisition for the CERP. On March 3, 2014, the court granted the SFWMD's motion for summary judgment. The SFWMD had previously prevailed in a similar lawsuit in Orlando, Friedman v. SFWMD, No. 07-CA-4772, (Fla. 9th Cir. Ct. 2011), *aff'd per curiam*, No. 5D11-1916 (Fla. 5th DCA 2012). Plaintiffs appealed the court's order to the Third District Court of Appeal.

G. Conservancy of Southwest Florida, Inc. v. South Florida Water Management District, DOAH Case No. 14-1329RP – Rule Challenge.

On March 17, 2014, the Conservancy of Southwest Florida (Conservancy) filed a challenge to the SFWMD's C-43 Caloosahatchee Water Reservation rule with the Division of Administrative Hearings (DOAH). The Conservancy contended that the SFWMD was without statutory authority to adopt a rule stating that presently existing permitted water withdrawals are not contrary to the public interest. A Final Order was entered on April 25, 2014, finding the SFWMD's proposed rule was an invalid exercise of delegated legislative authority.

Section 373.223(4), Florida Statutes, in relevant part, authorizes the SFWMD Governing Board to reserve water for the protection of fish and wildlife. When this authority is exercised, the Legislature also directs that "all presently existing legal uses of water shall be protected so long as such use is not contrary to the public interest." The proposed rule, a water reservation for the Caloosahatchee River ("C-43") West Basin Storage Reservoir, intended to set aside water made available by the C-43 project for the protection of fish and wildlife. The proposed reservation included the challenged paragraph stating: "(3)(d) Pursuant to subsection 373.223(4), Florida Statutes, presently existing legal uses *for the duration of the permit* existing on [the rule adoption date] are not contrary to the public interest." The italicized phrase is of particular import to the administrative law judge's ("ALJ") decision. Generally, the purpose of the proposed paragraph was to provide notice to existing legal users of their status under the reservation statute as the C-43 reservation took effect.

The ALJ concluded that the proposed rule was an invalid exercise of delegated legislative authority because it modified or contravened the reservation statute. The ALJ's decision was based on the following key findings: (1) by establishing that existing legal uses are protected for the "duration of the permit," the SFWMD illegally modified the scope of the reservation statute; (2) the plain meaning of the statute "is to protect a permitted water use from the effect of a reservation of water only if such use remains not contrary to the public interest;" (3) the proposed rule would maintain the protection even if a given use becomes contrary to the public interest, thereby expanding the statutory authorization; and (4) the reservation statute does not authorize the SFWMD to "prospectively" identify users as "not contrary to the public interest" for the duration of their permit.

In making these findings, the ALJ rejected the SFWMD's arguments that the rule could be amended, if and when uses became contrary to the public interest. The ALJ did not address the SFWMD's argument that a reservation for CERP is unique, and associated with a larger statutory framework. Interestingly, the ALJ made two additional findings: (1) existing legal uses are presumed not contrary to the public interest, unless and until the SFWMD determines otherwise; and (2) the SFWMD simply could not make a "not contrary" determination prospectively for the duration of the permit.

H. Zagame.

This matter presented a case of first impression regarding the application and interpretation of the newly amended agricultural exemption provided in section 373.406(2), Florida Statutes.

The matter arose in 2007 when SWFWMD staff discovered the unauthorized dredging and filling of wetlands on several parcels of property in Sumter County. During the course of several years, SWFWMD staff attempted to negotiate with the property owners' representative, Joseph Zagame, to address the alleged violations and reach a settlement agreement but were unsuccessful. Zagame maintained that the activities were exempt pursuant to the agricultural exemption provided in section 373.406(2), Florida Statutes.

In November 2011, SWFWMD requested from FDACS a determination regarding the qualification for the agricultural exemption. In February 2012, FDACS issued its binding determination, finding that the activities conducted on the property were not exempt from permitting requirements. In March 2012, Zagame filed a Petition for Formal Administrative Hearing challenging the binding determination. Because SWFWMD requested the binding determination from FDACS and because the outcome of any such proceedings had the potential to impact SWFWMD's ability to administer and enforce its ERP requirements, it intervened in the proceedings.

A final hearing commenced in August 2012, and was continued and concluded in October 2012. A Recommended Order was issued on February 1, 2013, in which the ALJ rejected FDACS's binding determination and recommended that the entirety of the activities qualified for the agricultural exemption. Both FDACS and SWFWMD filed exceptions to the Recommended Order. On May 2, 2013, FDACS entered a Final Order rejecting the Recommended Order in part, finding that Zagame was entitled to an exemption for the dredging portion of the activities (comprising approximately 1.12 acres), but was not entitled to an exemption for the filling portion of the activities (comprising approximately 1.3 acres).

On May 30, 2013, Zagame filed a notice of appeal of the Final Order in the First District Court of Appeal. SWFWMD filed a Notice of Cross Appeal. The parties were able to negotiate a Settlement Agreement and, upon motion of the parties, on September 26, 2013, the First District Court of Appeal entered an order vacating the Final Order and remanding the matter back to FDACS for further proceedings in order to allow the parties to effectuate the terms and conditions of the Settlement Agreement. In accordance with the Settlement Agreement, FDACS entered an Order placing the matter in abeyance to allow SWFWMD and Zagame the time to review his pending ERP application. Zagame then submitted information to SWFWMD that completed his pending ERP application, which was subsequently issued. Zagame subsequently

withdrew his March 5, 2012, request for administrative hearing and SWFWMD withdrew its November 14, 2011, request for binding determination in this matter. Finally, on April 16, 2014, FDACS entered a Final Order vacating its May 2, 2013, Final Order in Case No. 12-1356 and closing its File No. A77568 and effectively closing the case.

IV. MISCELLANEOUS UPDATE

A. Central Florida Water Initiative (CFWI).

The Central Florida Water Initiative (“CFWI”) is a collaborative water supply planning effort among the state's three largest WMDs, FDEP, FDACS, and regional water utilities. The CFWI region covers five counties, including Orange, Osceola, Polk, Seminole and southern Lake. The boundaries of SJRWMD, SFWMD and SWFWMD meet in the area. The CFWI mission is to help protect, develop, conserve and restore central Florida's water resources by collaborating to develop a unified process to address central Florida's current and long-term water supply needs. The CFWI is led by a Steering Committee that includes a public water supply utility representative, a Governing Board member from each of the three WMDs, and representatives from FDEP and FDACS. The Steering Committee oversees the CFWI process and provides guidance to the technical teams and technical oversight management committees that are developing and refining information on central Florida's water resources. The Steering Committee has guided the technical and planning teams in the development of the Regional Water Supply Plan (“RWSP”), which ensures the protection of water resources and related natural systems and identifies sustainable water supplies for all water uses in the CFWI through 2035.

Several technical teams worked collaboratively to build a strong scientific foundation of knowledge upon which the RWSP has been developed. Team members working on the RWSP have focused their efforts on: developing population and water demand projections; ensuring consistent utilization of resource evaluation criteria; developing a water conservation component for the RWSP; evaluating water sources; and identifying and analyzing water supply development and water resource development project options. The final draft RWSP has been completed and posted to the CFWI website (cfwiwater.com).

The CFWI effort has now shifted its technical effort to a solutions-oriented phase focusing on completion of the scopes of work of the Solutions Planning and Regulatory Teams. Once the work of the Solutions Planning and Regulatory Teams is complete, it will be appropriate for the RWSP to be updated and presented to SWFWMD’s Governing Board for action. It is anticipated that the final RWSP will be submitted to SWFWMD’s Governing Board for approval in mid-2015.

In May 2014, the three WMD governing boards adopted a resolution acknowledging delivery of the draft RWSP and supporting the findings as, thus far, compiled; recognizing that the RWSP is not complete due to the ongoing work of the Solutions Planning and Regulatory Teams; reaffirming support for the CFWI collaborative effort; and directing staff to continue its work to further complete the tasks identified in the CFWI Guidance Document.

Also, in December 2013, DEP issued a guidance memorandum for permitting within the CFWI region as the team develops its solution. The guidance memorandum includes

recommendations for permitting conditions that should be included on all water use permits issued or renewed within the CFWI while this process continues.

B. SWFWMD: Chassahowitzka/Homasassa River Systems.

On March 20, 2013, rule 40D-8.041, Florida Administrative Code, establishing the minimum flows for the Chassahowitzka and Homosassa River Systems, became effective. SWFWMD worked on the development of these minimum flows for several years and conducted more than 30 public meetings and received thousands of pages of comments during the process. On March 28, 2013, a petition was filed with FDEP requesting a hearing, pursuant to section 373.114(2), Florida Statutes, to determine that SWFWMD's rules establishing the minimum flows for the Chassahowitzka and Homosassa River Systems are inconsistent with the water resource implementation rule. This public hearing was held on September 10, 2013, and SWFWMD is currently awaiting FDEP to complete its consistency review of the SWFWMD rules. If FDEP determines that the rules are inconsistent with the water resource implementation rule, then it may order SWFWMD to initiate rulemaking proceedings to amend or repeal the rules. An order from FDEP requiring amendment or repeal of a rule may be appealed to the Land and Water Adjudicatory Commission by SWFWMD.