

**CHAPTER 62-40
WATER RESOURCE IMPLEMENTATION RULE**

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**PART I
GENERAL**

62-40.110 Declaration and Intent.

(1) The waters of the state are among its basic resources. Such waters should be managed to conserve and protect natural resources and scenic beauty and to realize the full beneficial use of the resource. Recognizing the importance of water to the state, the Legislature passed the Water Resources Act, Chapter 373, Florida Statutes, and the Air and Water Pollution Control Act, Chapter 403, Florida Statutes. Additionally, numerous goals and policies within the State Comprehensive Plan, Chapter 187, Florida Statutes, address water resources and natural systems protection.

(2) This Chapter is intended to provide water resource implementation goals, objectives, and guidance for the development and review of programs, rules, and plans relating to water resources, based on statutory policies and directives in Chapters 187, 373, and 403, Florida Statutes.

(3) These policies shall be construed as a whole and no individual policy shall be construed or applied in isolation from other policies. All constructions of this Chapter shall give meaning to all parts of the rule when possible.

(4) This Chapter, in and of itself, shall not constitute standards or criteria for decisions on individual permits. This Chapter also does not constitute legislative authority to the Districts for the adoption of rules if such rules are not otherwise authorized by statute.

(5) A goal of this Chapter is to coordinate the management of water and related land resources. Local governments shall consider the water resource implementation rule in the development of their comprehensive plans as required by Chapter 163, Florida Statutes, and as required by Section 403.0891(3)(a), F.S. Special districts which manage water shall consider the water resource implementation rule in the development of their plans and programs. The Legislature has also expressed its intent, in Section 373.0395, F.S., that future growth and development planning reflect the limitations of available ground water and other water supplies.

(6) It is an objective of the State to protect the functions of entire ecological systems, as developed and defined in the programs, rules, and plans of the Department and water management districts.

(7) It is a goal of this chapter that sufficient water be available for all existing and future reasonable-beneficial uses and the natural systems, and that the adverse effects of competition for water supplies be avoided.

(8) The Department and the Districts shall take into account cumulative impacts on water resources and manage those resources in a manner to ensure their sustainability.

(9) Government services should be provided efficiently. Inefficiency resulting from duplication of permitting shall be eliminated where appropriate, including water supply, water quality and water quantity permitting functions.

(10) Public education, awareness, and participation shall be encouraged. The Department and Districts should assist educational institutions in the development of educational curricula and research programs which meet Florida's present and future water management needs.

(11) This Chapter does not repeal, amend or otherwise alter any rule now existing or later adopted by the Department or Districts. However, procedures are included in this Chapter which provide for the review of Department and District plans, programs, and rules to assure consistency with the provisions of this Chapter. The procedure for modification of District rules as requested by the Department shall be as prescribed in Section 373.114, F.S. and applicable provisions of this Chapter.

(12) It is the intent of the Department, in cooperation with the Water Management Districts, to seek adequate sources of funding to supplement District ad valorem taxes to implement the provisions of this Chapter.
Specific Authority 373.026(7), 373.043, 373.036(1)(d), 373.171 FS. Law Implemented 373.023, 373.026, 373.033, 373.036(1)(d), 373.0391, 373.0395, 373.042, 373.046, 373.0831, 373.086, 373.103, 373.106, 373.171, 373.175, 373.185, 373.1961, 373.223, 373.246, 373.250, 373.418, 373.451, 373.453, 403.0615(3), 403.064, 403.0891 FS., Ch. 2002-296, s. 38, Laws of Fla. History - New 5-5-81, Formerly 17-40.01, Amended 12-5-88, Formerly 17-40.001, Amended 8-14-90, 12-17-91, Formerly 17-40.110, Amended 7-20-95, 5-7-05.

62-40.120 Department Rules.

The water resource implementation rule shall also include the following Department rules:

- (1) Surface Water Quality Standards, Chapter 62-302, and section 62-4.242, F.A.C.
- (2) Ground Water Classes, Standards, and Exemptions, Chapter 62-520, F.A.C.
- (3) Drinking Water Standards, Monitoring, and Reporting, Chapter 62-550, F.A.C.

Specific Authority 373.026(7), 373.043, 373.036(1)(d), 373.171 FS. Law Implemented 373.023, 373.026, 373.036(1)(d), 373.0391, 373.0395, 373.042, 373.046, 373.103, 373.106, 373.171, 373.175, 373.1961, 373.223, 373.246, 373.250, 373.418, 373.451, 373.453, 403.0615(3), 403.064, 403.0891 FS. History - New 8-14-90, Formerly 17-40.120, Amended 7-20-95, 5-7-05.

PART II DEFINITIONS

62-40.210 Definitions.

When used in this Chapter and in the review of rules of the Districts pursuant to Subsection 373.114(2), F.S., unless the context or content of such District rule requires a narrower, more specific meaning, the following words shall mean:

(1) "Aquifer" shall mean a geologic formation, group of formations, or part of a formation that contains sufficient saturated permeable material to yield useful quantities of ground water to wells, springs or surface water.

(2) "Basin Management Action Plan" means the document that sets forth the activities, schedule, and funding sources by which point and nonpoint dischargers will reduce pollutants discharged to impaired waters and meet the total maximum daily load established for those waters.

(3) "Conservation rate structure" means a schedule of utility water rates designed to promote efficient use of water by providing economic incentives.

(4) "Consumptive use" means any use of water which reduces the supply from which it is withdrawn or diverted.

(5) "Department" means the Department of Environmental Protection.

(6) "Designated use" means the present and future most beneficial use of a body of water pursuant to the water quality classification system in section 62-302.400, F.A.C.

(7) "Detention" means the delay of stormwater runoff prior to its discharge.

(8) "District" means a Water Management District created pursuant to Section 373.069, F.S.

(9) "District Water Management Plan" means the regional water resource plan developed by a governing board under Section 373.036, F.S.

(10) "Drought rate structure" means an element of a utility rate structure intended to provide an economic incentive to reduce water use during times of drought.

(11) "Floodplain" means land area subject to inundation by flood waters from a river, watercourse, lake, or coastal waters. Floodplains are delineated according to their estimated frequency of flooding.

(12) "Florida Water Plan" means the state-level water resource plan developed by the Department under Section 373.036, F.S.

(13) "Governing Board" means the governing board of a water management district created under Section 373.069, F.S.

(14) "Ground water" means water beneath the surface of the ground, whether or not flowing through known and definite channels.

(15) "Ground water basin" means a ground water flow system that has defined boundaries and may include permeable materials that are capable of storing or furnishing a significant water supply. The basin includes both the surface area and the permeable materials beneath it.

(16) "High recharge areas" means areas contributing significant volumes of water which add to the storage and flow of an aquifer through vertical movement from the land surface. The term significant will vary geographically depending on the hydrologic characteristics of that aquifer.

(17) "Informative billing" means a system of providing water utility customers with useful information on the relationship between the amount of water they use and the cost associated with that use. Examples of the information include the utility's rate structure, amount of water used in the current month, amount of water used in the previous month, amount of water used in the same month of the previous year, information on the average usage of all customers in the same customer class, seasonal rates and applicable months, drought rates, information on conserving water, or other information deemed appropriate by the utility.

(18) "Impaired water" means a water body or water body segment that does not meet one or more of its designated uses due in whole or in part to discharges of pollutants, and has been listed as impaired by order of the Secretary in accordance with the procedures set forth in Chapter 62-303, F.A.C.

(19) "Natural systems" for the purpose of this rule means an ecological system supporting aquatic and wetland-dependent natural resources, including fish and aquatic and wetland-dependent wildlife habitat.

(20) "Pollutant load reduction goal," or PLRG, means estimated numeric reductions in pollutant loadings, usually established in a Surface Water Improvement and Management or other watershed management plan, that are needed to preserve or restore designated uses of receiving bodies of water and maintain water quality consistent with applicable state water quality standards. In some cases, PLRGs may provide the scientific basis for the development of a Total Maximum Daily Load.

(21) "Potable quality water offset" means the amount of potable quality water (Class F-I, G-I, or G-II ground water or water meeting drinking water standards) saved through the use of reclaimed water expressed as a percentage of the total reclaimed water used. The potable quality water offset is calculated by dividing the amount of potable water saved by the amount of reclaimed water used and multiplying the quotient by 100.

(22) "Prime recharge areas" means areas that are generally within high recharge areas and are significant to present and future ground water uses including protection and maintenance of natural systems and water supply.

(23) "Reasonable-beneficial use" means the use of water in such quantity as is necessary for economic and efficient utilization for a purpose and in a manner which is both reasonable and consistent with the public interest.

(24) "Recharge fraction" means the portion of reclaimed water used in a reuse system that recharges an underlying potable quality ground water (Class F-I, G-I, or G-II ground water) that is used for potable supply, or augments a Class I surface water, expressed as a percentage of the total reclaimed water used.

(25) "Reclaimed water," except as specifically provided in Chapter 62-610, F.A.C., means water that has received at least secondary treatment and basic disinfection, and is reused after flowing out of a domestic wastewater treatment facility.

(26) "Regional water supply plan" means a water supply plan approved by a governing board pursuant to Section 373.0361, F.S.

(27) "Retention" means the prevention of stormwater runoff from direct discharge.

(28) "Reuse" means the deliberate application of reclaimed water, in compliance with Department and District rules, for a beneficial purpose.

(29) "Seasonal rate structure" means a utility water rate structure in which the amount charged per unit of water increases during the peak demand season.

(30) "Secretary" means the Secretary of the Department of Environmental Protection.

(31) "State water quality standards" means water quality standards adopted by the Environmental Regulation Commission pursuant to Chapter 403, Florida Statutes, including standards composed of designated most beneficial uses (classification of waters), the numerical and narrative criteria applied to the specific water use or classification, the Florida anti-degradation policy (Rules 62-4.242 and 62-302.300, F.A.C.), and the moderating provisions contained in Chapters 62-4, 62-302, 62-520, and 62-550, F.A.C.

(32) "Stormwater" means the water that results from a rainfall event.

(33) "Stormwater management program" means the institutional strategy for stormwater management, including urban, agricultural, and other stormwater.

(34) "Stormwater management system" means a system which is designed and constructed or implemented to control stormwater, incorporating methods to collect, convey, store, absorb, inhibit, treat, use, or reuse stormwater to prevent or reduce flooding, over-drainage, environmental degradation and water pollution or otherwise affect the quantity and quality of discharges from the system.

(35) "Stormwater recycling" means capturing stormwater for irrigation or other beneficial use.

(36) "Stormwater utility" means the entity through which funding for a stormwater management program is obtained by assessing the cost of the program to the beneficiaries based on their relative contribution to its need. It is operated as a typical utility that bills services regularly, similar to water and wastewater services.

(37) "Surface water" means water upon the surface of the earth, whether contained in bounds created naturally or artificially or diffused. Water from natural springs shall be classified as surface water when it exits from the spring onto the earth's surface.

(38) "Total maximum daily load," or TMDL, means the sum of the individual wasteload allocations for point sources and the load allocations for nonpoint sources and natural background. Prior to determining individual wasteload allocations and load allocations, the maximum amount of a pollutant that a water body or water segment can

assimilate from all sources without exceeding water quality standards must first be calculated.

(39) "Water resource caution area" means a geographic area identified by a District as having existing water resource problems or an area in which water resource problems are projected to develop during the next twenty years.

(40) "Water" or "waters in the state" means any and all water on or beneath the surface of the ground or in the atmosphere, including natural or artificial watercourses, lakes, ponds, or diffused surface water and water percolating, standing, or flowing beneath the surface of the ground, as well as all coastal waters within the jurisdiction of the state.

(41) "Watershed" means the land area that contributes to the flow of water into a receiving body of water.

(42) "Watershed management goal" means an overall goal for the management of water resources within a watershed.

Specific Authority 373.026(7), 373.043, 373.036(1)(d), 373.171 FS. Law Implemented 373.023, 373.026, 373.036(1)(d), 373.0391, 373.0395, 373.042, 373.046, 373.086, 373.103, 373.106, 373.171, 373.175, 373.1961, 373.223, 373.246, 373.250, 373.418, 373.451, 373.453, 403.0615(3), 403.064, 403.067, 403.0891 FS. History - New 5-5-81, Formerly 17-40.02, Amended 12-5-88, Formerly 17-40.020, Amended 8-14-90, 12-17-91, Formerly 17-40.210, Amended 7-20-95, 5-7-05.

PART III GENERAL PROVISIONS

62-40.310 General Policies.

The following statement of general water resource implementation policy shall guide Department review of water management programs, rules, and plans. Water management programs, rules and plans, where economically and environmentally feasible, not contrary to the public interest, and consistent with Florida law, shall seek to:

- (1) Water Supply
 - (a) Promote the availability of sufficient water for natural systems, and sufficient and affordable water for all existing and future reasonable-beneficial uses. Uses of water authorized by a permit shall be limited to reasonable-beneficial uses.
 - (b) Promote water resource development and water supply development pursuant to sections 373.0361 and 373.0831, F.S.
 - (c) Reserve, by rule, water from use by permit applicants, in such locations and quantities, and for such seasons of the year, as in the judgment of the District or Department, may be required for the protection of fish and wildlife, or the public health and safety. Such reservations shall be subject to periodic review and revision in light of changed conditions. However, all presently existing legal uses of water shall be protected so long as such use is not contrary to the public interest.

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- (d) Champion and develop sound water conservation practices and public information programs.
 - (e) Advocate and direct the reuse of reclaimed water as an integral part of water and wastewater management programs, rules, and plans consistent with protection of the public health and surface and ground water quality.
 - (f) Improve the efficiency and effectiveness of reuse of reclaimed water by encouraging those uses that increase potable quality water offsets or recharge fractions, where consistent with water quality protection.
 - (g) Encourage the use of water of the lowest acceptable quality for the purpose intended.
 - (h) Encourage the development of local and regional surface and ground water supplies within districts rather than transfer water across District boundaries.
 - (i) Encourage the use of water from sources nearest the area of use or application whenever practical, in accordance with and subject to the limitations of paragraphs 373.016(4)(a) and (b), and subsections 373.1962(9), 373.1963, 272.223(3), and 373.229(3), F.S.
 - (j) Encourage demand management and the development of alternative water supplies, including water conservation, reuse of reclaimed water, desalination, stormwater and industrial wastewater recycling, recharge, and aquifer storage and recovery.
 - (k) Protect aquifers and surface waters from depletion through water conservation, use of alternative water supplies, implementation of water shortage plans, and preservation of the functions of high recharge areas.
 - (2) Water Quality Protection and Management
 - (a) Restore and protect the quality of ground and surface water by solving current problems and ensuring high quality treatment for stormwater and wastewater.
 - (b) Identify existing and future public water supply areas and protect them from contamination.
 - (3) Flood Protection and Floodplain Protection
 - (a) Encourage nonstructural solutions to water resource problems and consider nonstructural alternatives whenever structural works are proposed.
 - (b) Manage the construction and operation of facilities that dam, divert, or otherwise alter the flow of surface waters to minimize damage from flooding, soil erosion or excessive drainage.
 - (c) Encourage the management of floodplains and other flood hazard areas to prevent or reduce flood damage, consistent with establishment and maintenance of desirable hydrologic characteristics and associated natural systems.
 - (d) Encourage the development and implementation of a strict floodplain management program by state, regional, and local governments designed to preserve floodplain functions and associated natural systems.

(e) Avoid the expenditure of public funds that encourage or subsidize incompatible new development or significant expansion of existing development in high-hazard flood areas.

(f) Minimize flood-related emergencies, human disasters, loss of property, and other associated impacts.

(4) Natural Systems Protection and Management

(a) Establish minimum flows and levels to protect water resources and the environmental values associated with marine, estuarine, freshwater, and wetlands ecology.

(b) Mitigate adverse impacts resulting from prior alteration of natural hydrologic patterns and fluctuations in surface and ground water levels.

(c) Utilize, preserve, restore, and enhance natural water management systems and discourage the channelization or other alteration of natural rivers, streams and lakes.

(5) Management Policies

(a) Protect the water storage and water quality enhancement functions of wetlands, floodplains, and aquifer recharge areas through acquisition, enforcement of laws, and the application of land and water management practices that provide for compatible uses.

(b) Emphasize the prevention of pollution and other water resource problems.

(c) Develop interstate agreements and undertake cooperative programs with Alabama and Georgia to provide for coordinated management of surface and ground waters.

Specific Authority 373.026(7), 373.043, 373.036(1)(d), 373.171 FS. Law Implemented 373.023, 373.026, 373.036(1)(d), 373.0361, 373.0391, 373.0395, 373.042, 373.0421, 373.046, 373.0831, 373.103, 373.171, 373.175, 373.1961, 373.1962(9), 373.1963, 373.223, 373.229, 373.246, 373.250, 373.413, 373.414, 373.416, 373.418, 373.451, 373.453, 403.0615(3), 403.064, 403.0891 FS. History - New 7-1-81, Formerly 17-40.03, Amended 12-5-88, Formerly 17-4.030, Amended 8-13-90, 12-17-91, Formerly 17-40.310, Amended 7-20-95, 5-7-05.

PART IV RESOURCE PROTECTION AND MANAGEMENT

62-40.401 Water Use and Reuse. (Repealed)

Specific Authority 373.026, 373.043 FS. Law Implemented 187.101(3), 373.016, 373.0391(2)(e), Part II of Ch. 373, 403.064 FS. History - New 5-5-81. Amended 2-4-82, Formerly 17-40.04, Amended 12-5-88. Formerly 17-40.040, Amended 8-14-90, 12-17-91, Formerly 17-40.401, Repealed 7-20-95.

62-40.410 Water Supply Protection and Management.

The following shall apply when the use of water is regulated pursuant to Part II of Chapter 373, F.S.:

- (1) No permit shall be granted to authorize the use of water unless the applicant establishes that the proposed use is a reasonable-beneficial use, will not interfere with presently existing legal uses of water, and is consistent with the public interest.
- (2) In determining whether a water use is a reasonable-beneficial use, the following factors will be considered:
 - (a) The quantity of water requested for the use;
 - (b) The demonstrated need for the use;
 - (c) The suitability of the use to the source of water;
 - (d) The purpose and value of the use;
 - (e) The extent and amount of harm caused;
 - (f) The practicality of mitigating any harm by adjusting the quantity or method of use;
 - (g) Whether the impact of the withdrawal extends to land not owned or legally controlled by the user;
 - (h) The method and efficiency of use;
 - (i) Water conservation measures taken and available to be taken;
 - (j) The feasibility of alternative sources such as reclaimed water, stormwater, aquifer storage and recovery, brackish water and salt water;
 - (k) The present and projected demand for the source of water;
 - (l) The long-term yield available from the source of water;
 - (m) The extent of water quality degradation caused;
 - (n) Whether the proposed use would cause or contribute to flood damage;
 - (o) Whether the proposed use would significantly induce or increase saltwater intrusion;
 - (p) The amount of water which can be withdrawn without causing harm to the resource;
 - (q) Whether the proposed use would adversely affect public health; and
 - (r) Whether the proposed use would significantly affect natural systems.
- (3) Water may be reserved from permit use in such locations and quantities, and for such seasons of the year, as is required for the protection of fish and wildlife or the public health or safety. Such reservations shall be subject to periodic review and revision in light of changed conditions. However, all presently existing legal users of water shall be protected so long as such use is not contrary to the public interest. Reservations shall be established in accordance with section 62-40.474, F.A.C.
- (4) If water withdrawals are causing, or are projected to cause within 20 years, a water body to fall below its minimum flow or level established pursuant to sections 373.042 and 373.0421, F.S., a recovery or prevention strategy shall be expeditiously implemented to achieve or maintain the established minimum flow or level

consistent with section 373.042(2). For water bodies that are below their established minimum flow or level, renewals of existing consumptive use permits, increased allocations, or new withdrawals shall be allowed only if they meet applicable District rules, including those implementing the recovery or prevention strategy.

(5) In implementing consumptive use permitting programs, the Department and the Districts shall recognize the rights of property owners, as limited by law, to make consumptive uses of water from their land, and the rights of other users, as limited by law, to make consumptive uses of water, for reasonable-beneficial uses in a manner consistent with the public interest that will not interfere with any presently existing legal use of water.

(6) Permits authorizing consumptive uses of water which cause unanticipated significant adverse impacts on off-site land uses existing at the time of permit application, or on legal uses of water existing at the time of permit application, shall be considered for modification, to curtail or abate the adverse impacts, unless the impacts can be mitigated by the permittee.

(7) In implementing consumptive use permitting programs, the Department and Districts shall strive to prevent harm to natural systems without the need for artificial maintenance of natural systems by pumped groundwater augmentation. If groundwater augmentation is authorized, reasonable assurance must be provided that such augmentation will not cause harm to natural systems.

(a) In the adoption and implementation of consumptive use permitting rules regarding use of pumped ground water to artificially maintain natural systems that otherwise would be adversely affected by withdrawals for water supply, consideration shall be given to the following factors:

1. Whether there are other economically, environmentally, and technically feasible means to avoid the impacts, including the use of alternative water sources, that would reduce or eliminate the impact. In determining economic feasibility, the Department and Districts shall consider costs and benefits;

2. The current condition of the natural system, and whether the system would be enhanced over the current condition through augmentation;

3. The geographic extent of the system to be augmented; and

4. The amount of water made available for water supply compared to the amount required for augmentation.

(b) The use of reclaimed water and recycled stormwater is encouraged in situations when the augmentation of wetlands is conducted, where practical and consistent with water quality protection.

(c) This paragraph is not intended to exclude other means to avoid or mitigate adverse impacts to natural systems.

(8) The Districts shall determine whether Section 373.233, F.S., entitled "Competing Applications", and implementing rules, are applicable to pending applications.

(9) Any reallocation of an existing permitted quantity of water shall be reviewed by the District and shall be subject to full compliance with the applicable permitting criteria of the District.

Specific Authority 373.026(7), 373.043, 373.036(1)(d), 373.171 FS. Law Implemented 373.023, 373.026, 373.036(1)(d), 373.042, 373.0421, 373.103, 373.171, 373.175, 373.1961, 373.223, 373.233, 373.246, 373.250, 373.413, 373.414, 373.416, 373.418, 403.064, 403.0891 FS. History - New 7-20-95, Amended 5-7-05, 5-7-06.

62-40.411 Water Shortage

(1) To the extent practical, the Districts shall seek to achieve a consistent approach to water shortage phases and related restrictions, particularly where political jurisdictions fall within more than one District.

(2) Except when an emergency order is issued under sections 373.175 and 373.246, F.S., when a District declares a phased water shortage, it will impose water use restrictions in a minimum of three and a maximum of four phases depending upon the severity of the shortage. The phases are as follows:

(a) A "moderate" water shortage shall result in the imposition of Phase 1 water restrictions.

(b) A "severe" water shortage shall result in the imposition of Phase 2 water restrictions.

(c) An "extreme" water shortage shall result in the imposition of Phase 3 water restrictions.

(d) A "critical" water shortage shall result in the imposition of Phase 4 water restrictions.

(3) In implementing the phased water use restrictions, the factors the District shall consider include:

(a) The source of the water supply experiencing the shortage;

(b) The relative impact of the various categories of water users on the water body for which the shortage is declared;

(c) The availability and practicality of alternative sources;

(d) The economic impacts that the restrictions are likely to have on each category of user. To the degree practical, the governing board shall impose water use restrictions in a manner that distributes the burden of the restrictions equitably among water users, relative to their impact on the sources experiencing the shortage;

(e) The potential for harm to natural systems;

(f) Water shortage plans of regional water supply authorities and local governments;

(g) The appropriate geographic scope of the restrictions;

(h) The effectiveness of the restriction imposed in terms of reducing water use and protecting the relevant water supply source; and

(i) The impact of the restriction on the public health, safety and welfare.

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- (4) Use classifications to be used when implementing water use restrictions shall include the following:
- (a) Indoor uses, which include water used for indoor personal and household needs, and similar needs at businesses;
 - (b) Essential uses such as fire fighting, sanitation, health and medical use;
 - (c) Agricultural uses, such as production of vegetable and other crops, citrus and fruit trees, nursery plants, pasture, sod, aquaculture, soil flooding, and freeze protection;
 - (d) Commercial and industrial uses in which water is integral to the production of goods and services, including power generation;
 - (e) Water utility use, which may include both water used for potable supply and water used for maintaining and operating the supply system;
 - (f) Landscape irrigation, which is the outdoor irrigation of grass, trees and other plants in places such as residences, businesses, golf courses, parks, recreational areas, cemeteries, and public buildings; and
 - (g) Other uses such as aesthetic ponds, fountains and water features, environmental restoration or enhancement, cooling and air conditioning, and navigation.
- (5) The District may expand upon or further subdivide the use classifications in (a) through (g) above for purposes of issuing restrictions on specific uses. Specific Authority 373.026(7), 373.043, 403.036(1)(d), 373.171 FS. Law Implemented 373.023, 373.026, 373.103, 373.171, 373.175, 373.1961, 373.223, 373.246, 373.250, 373.418, 403.064 FS. History – New 5-7-05.

62-40.412 Water Conservation.

- (1) The overall water conservation goal of the state shall be to prevent and reduce wasteful, uneconomical, impractical, or unreasonable use of water resources. Conservation of water shall be required unless not economically, environmentally, or technically feasible.
- (2) The Districts shall seek to accomplish this goal by:
- (a) Assisting local governments, water supply utilities, regional water supply authorities, and other parties in designing and implementing plans and programs to conserve water. Such programs may include analyzing the effectiveness of particular water conservation measures.
 - (b) Coordinating with the Florida Department of Agriculture and Consumer Services in the development of agricultural water conservation programs and best management practices pursuant to section 570.085, F.S.
 - (c) Requiring efficient use of water. In determining efficiency requirements, the Districts shall consider the effectiveness of efficiency measures already being implemented, including whether a public water supply utility has achieved the per capita water use goal if such a goal is adopted by rule by the appropriate District, and the need for and feasibility of additional measures. Efficiency measures that shall be considered, but not necessarily required of each water user, include the following:

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1. Programs and measures that promote or require efficient irrigation practices;
 2. Imposition of year-round restrictions, which may include variances or exemptions, on particular irrigation activities or irrigation sources. If time of day watering restrictions are implemented, watering shall be restricted from 10:00 a.m. to 4:00 p.m. to the extent practical;
 3. Minimization of unaccounted-for water losses;
 4. The use of conservation rate structures wherever practical. A District shall afford a utility wide latitude in adopting a rate structure, and shall limit its review to whether the utility has provided reasonable assurance that the rate structure contains a schedule of rates designed to promote efficient use of water by providing economic incentives. The District shall not fix or revise rates or rate structures. Such rates may be phased in over time;
 5. The use of informative billing practices for utilities. Such practices may be phased in over time;
 6. Accurate measurement and reporting of water use, including metering; and
 7. Promotion of water-conserving plumbing fixtures and appliances, water efficient landscaping, and automatic rain sensors or soil moisture sensors.
 - (d) Considering incentives, such a long term permits or greater certainty of supply during water shortages, for permittees that implement conservation measures significantly beyond those required in the permitting process;
 - (e) Striving to achieve consistent water conservation requirements for water users in cities, counties or other political jurisdictions that fall within more than one District;
 - (f) Maintaining public information and education programs for long- and short-term water conservation goals;
 - (g) Including water conservation in regional water supply planning; and
 - (h) Promoting the efficient and effective reuse of reclaimed water and recycling of stormwater and industrial wastewater through measures including regulation, incentives, public education, and technical assistance consistent with the provisions of 62-40.416, F.A.C.
- (3) To demonstrate compliance with the efficiency requirement in paragraph (2)(c), a public water supply utility may propose a goal-based water conservation plan or program in lieu of the measures in subparagraphs 62-40.412(2)(c)1. through 7. above, or other standard requirements of a District. Such a plan or program shall allow flexibility in choosing water conservation measures to be implemented, and be affordable. The goal-based water conservation plan or program may include any of the measures in subparagraphs 62-40.412(2)(c)1. through 7. above, efficient and effective use of reclaimed or recycled water, educational or incentive programs, or other effective measures proposed by the water supply utility. Progress toward goals must be measurable. If a public water supply utility proposing a water conservation plan or

program provides reasonable assurance that the plan or program will achieve effective water conservation at least as well as the standard water conservation requirements adopted by the appropriate District, then the District shall approve the plan or program, and the plan or program shall satisfy water conservation requirements imposed as a condition to obtaining a consumptive use permit. For purposes of this subsection, the term "public water supply utility" shall include both publicly-owned and privately-owned public water supply utilities.

Specific Authority 373.026(7), 373.043, 373.036(1)(d), 373.171 FS. Law Implemented 373.023, 373.026, 373.036(1)(d), 373.0391, 373.103, 373.171, 373.175, 373.1961, 373.223, 373.246, 373.250, 373.418, 373.621, 403.064, 403.0891 FS., Ch. 2002-296, s. 38, Laws of Fla. History - New 7-20-95, Amended 1-7-97, 5-7-05.

62-40.416 Water Reuse and Recycling.

(1) The reuse of reclaimed water, the recycling of stormwater for irrigation and other beneficial uses, and the recycling of industrial wastewater, shall be promoted. In the adoption and implementation of consumptive use permitting rules, the reuse or recycling of water shall be required of water users unless objective evidence demonstrates that such reuse or recycling is not economically, environmentally, or technically feasible. In determining economic feasibility, the consideration shall include costs and benefits of the recycled or reclaimed water use, including the amount of reclaimed or recycled water than can be produced or used relative to the cost, and in the case of a reclaimed water provider, the likelihood that potential end users will utilize the reclaimed water. The data included in the applicable reuse feasibility study performed pursuant to Section 403.064, F.S., and the study's conclusions shall be considered by the District in making its determination of feasibility. A public water supply utility may develop a reuse or recycling plan and include that plan as part of its goal-based water conservation plan allowed by Rule 62-40.412(3), F.A.C., but inclusion of a reuse or recycling plan into a goal-based water conservation plan shall not alleviate any requirement to implement reuse when feasible.

(2) The Department encourages local governments to implement programs for reuse of reclaimed water, recycling of stormwater for irrigation and other beneficial uses, and recycling of industrial wastewater. The Districts are encouraged to establish incentives, such as longer permit duration and cost-sharing, for local governments and other interested parties to implement programs for reuse of reclaimed water and the recycling of stormwater. These rules shall not be deemed to pre-empt any such local reuse programs.

(3) Metering of reclaimed water use and implementation of volume-based charges, where a user of reclaimed water pays for service based, at least in part, on the actual metered volume of reclaimed water used, are encouraged for new reclaimed water facilities and programs to effectively manage reclaimed water supplies, when expected to result in more efficient and effective water use. The Districts are

encouraged to develop incentives, including funding programs, for the installation of meters on reclaimed water.

(4) The Department and the Districts shall encourage reuse that is efficient and effective and will increase potable quality water offset or recharge fraction, where consistent with water quality protection.

(5) Reclaimed water may be presumed available to a consumptive use permit applicant when a utility exists that provides reclaimed water, that has uncommitted reclaimed water capacity, and that has distribution facilities, that are initially provided by the utility at its cost, to the site of affected applicant's proposed use.

(6) Wastewater utilities located within, serving a population located within, or discharging within a water resource caution area shall perform the reuse feasibility analysis pursuant to section 403.064, F.S. A reuse feasibility study prepared under section 403.064(6), F.S., satisfies a District requirement to prepare a reuse feasibility study.

Specific Authority 373.026(7), 373.043, 373.036(1)(d), 373.171 FS. Law Implemented 373.023, 373.026, 373.036(1)(d), 373.0391, 373.103, 373.171, 373.1961, 373.223, 373.246, 373.250, 373.418, 403.0615(3), 403.064, 403.0891 FS. History - New 7-20-95, Amended 1-7-97, 5-7-05.

62-40.422 Interdistrict Transfer.

The following shall apply to the transfers of surface and ground water where such transfers are regulated pursuant to Part II of Chapter 373, Florida Statutes:

(1) The transfer or use of surface water across District boundaries shall require approval of each involved District. The transfer or use of ground water across District boundaries shall require approval of the District where the withdrawal of ground water occurs.

(2) In deciding whether the transfer and use of surface water across District boundaries is consistent with the public interest pursuant to Section 373.223, Florida Statutes, the Districts shall consider the extent to which:

(a) Comprehensive water conservation and reuse programs are implemented and enforced in the area of need;

(b) The major costs, benefits, and environmental impacts have been adequately determined including the impact on both the supplying and receiving areas;

(c) The transfer is an environmentally and economically acceptable method to supply water for the given purpose;

(d) The present and projected water needs of the supplying area are reasonably determined and can be satisfied even if the transfer takes place;

(e) The transfer plan incorporates a regional approach to water supply and distribution including, where appropriate, plans for eventual interconnection of water supply sources; and

(f) The transfer is otherwise consistent with the public interest based upon evidence presented.

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(3) The interdistrict transfer and use of ground water must meet the requirements of Section 373.2295, Florida Statutes.

Specific Authority 373.026(7), 373.043, 373.036(1)(d), 373.171 FS. Law Implemented 373.023, 373.026, 373.036(1)(d), 373.103, 373.171, 373.1961, 373.223, 373.2295, 373.246, 373.250, 373.418, 403.064, 403.0891 FS. History - New 5-5-81, Formerly 17-40.05, 17-40.050, 17-40.402, Amended 7-20-95, 5-7-05.

62-40.425 Watershed Management.

(1) A comprehensive watershed approach provides an important tool for managing the cumulative impacts of human activities. Where possible, the Department and Districts shall promote a watershed management approach for addressing water quality, water supply, natural systems, and floodplain management and flood protection issues, and shall encourage the development of comprehensive watershed management plans.

(2) It shall be a goal of watershed management programs to protect, preserve and restore the quality, quantity, and environmental values of surface and ground water resources; to prevent existing environmental, water quantity, and water quality problems from becoming worse; to reduce existing flooding problems; improve existing water quality; promote and protect the availability of sufficient water for all existing and future reasonable-beneficial uses and natural systems, and preserve or restore natural systems.

(3) As part of SWIM plans or other watershed management plans, programs, or rules, the Department, water management districts, Department of Agriculture and Consumer Services, and local governments are encouraged to implement protection measures as appropriate to enhance or preserve surface water resources. Protection measures shall be based on scientific evaluations of targeted surface waters and the need for enhancement or preservation of these surface water resources. Protection measures shall be based on scientific evaluations of targeted surface waters and the need for enhancement or preservation of these surface water resources. Protection measures shall include a combination of nonstructural pollution prevention best management practices and structural best management practices.

Specific Authority 373.026(7), 373.043, 373.036(1)(d), 373.171 FS. Law Implemented 373.023, 373.026, 373.036(1)(d), 373.171, 373.1961, 373.223, 373.418, 373.451, 373.453, 403.064, 403.067, 403.0891 FS. History – New 5-7-05.

62-40.430 Water Quality.

(1) Standards.

(a) Water quality standards shall be enforced pursuant to Chapters 403 and 373, F.S., to protect waters of the State from point and nonpoint sources of pollution.

(b) State water quality standards adopted by Department rule shall be a part of the Florida Water Plan.

(2) Impaired Waters.

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(a) The Department shall use a watershed management approach to develop and implement Total Maximum Daily Loads (TMDLs) for impaired waters. It shall be a goal of the TMDL watershed management program to increase coordination, cooperation, and communication between state, regional, and local government agencies, the private sector, and all watershed stakeholders. The Department's TMDL watershed management program shall strive to maximize the use of existing plans, data, and information developed for the watershed by the Districts and others.

(b) The TMDL watershed management program is based on a rotating basin approach throughout Florida's fifty-two major watersheds. To implement this approach, thirty groups of watersheds, or basins, have been specified in which a five-phase cycle will be conducted, as applicable. The five phases are:

1. Preliminary basin status evaluation leading to the development of a planning list of potentially impaired waters pursuant to Chapter 62-303, F.A.C.;

2. Strategic monitoring to collect additional information to be used in the development of a basin assessment, the development of a revised planning list of potentially impaired waters, and a verified list of impaired waters to be adopted by the Secretary and submitted to the United States Environmental Protection Agency as the state's basin specific 303 (d) list of impaired waters;

3. The development of TMDLs for waters on the verified (and subsequently adopted 303(d)) list of impaired waters;

4. The development by DEP, in cooperation with the Districts and basin stakeholders, of a basin management action plan for waters with TMDLs that specifies the equitable allocation of needed pollutant load reductions, and the specific activities to be undertaken to reduce pollutant loadings to achieve the TMDLs and to restore the designated uses of the impaired waters. The basin management action plan shall include, where applicable, any written agreements among stakeholders expressing their commitment to implement the plan; and

5. The implementation of the basin management action plan and the monitoring of results.

(c) In the development of a basin management action plan, the Department shall consider regulatory and non-regulatory alternatives to reduce basin-specific nonpoint source loadings, including programs developed by the Florida Department of Agriculture and Consumer Services pursuant to section 403.067, F.S., and the need for the adoption of basin-specific criteria for stormwater management systems. When determined by the Department, in consultation with the Districts, to be necessary to achieve a TMDL, the Department and Districts shall adopt such criteria for permitting stormwater management systems.

(d) In cooperation and coordination with the Department, the Districts shall establish pollutant load reduction goals for SWIM and other water bodies, and include them as part of a SWIM plan, other watershed management plan, or District-wide or basin-specific rules.

(e) To accelerate the restoration of impaired waters, the Districts and local governments, in cooperation and coordination with the Department, are encouraged to give priority to the development of watershed management plans for waters on the verified (and subsequently adopted 303(d)) list of impaired waters. Watershed management goals, which may include pollutant load reduction goals, shall be included in watershed management plans developed by the Districts and are encouraged in watershed management plans developed by local governments. These plans and goals shall be coordinated with the Surface Water Improvement and Management (SWIM) program, the Department's TMDL watershed management program, the National Estuary Program, and the National Pollutant Discharge Elimination System (NPDES) program.

(f) The Department and the Districts shall consider economic, environmental, and technical factors in implementing programs to achieve total maximum daily loads or pollutant load reduction goals. These goals shall be considered in local comprehensive plans submitted or updated in accordance with section 403.0891(3)(a), F.S.

(g) Waters on the state's verified (and subsequently adopted 303(d)) list of impaired waters shall receive priority consideration for water quality restoration activities undertaken by federal agencies, state agencies, and water management districts. Local governments shall be encouraged to give similar priority consideration to waters on the list.

Specific Authority 373.026(7), 373.043, 373.036(1)(d), 373.171 FS. Law Implemented 373.023, 373.026, 373.036(1), 373.103, 373.171, 373.418 FS. History - New 5-5-81, Formerly 17-40.06, 17-40.060, 17-40.403, 17-40.430, Amended 5-7-05.

62-40.431 Stormwater Management Program

(1) Effective stormwater management is essential to reduce existing nonpoint source pollution problems and to protect surface water resources from stormwater pollution from existing and new land uses.

(2) The following goals are established to provide guidance for Department, District and local government stormwater management programs:

(a) The primary goals of the state's stormwater management program are to maintain, to the maximum extent practical, during and after construction and development, the pre-development stormwater characteristics of a site; to reduce stream channel erosion, pollution, siltation, sedimentation and flooding; to reduce stormwater pollutant loadings discharged to waters to preserve or restore designated uses; to reduce the loss of fresh water resources by encouraging the recycling of stormwater; to enhance ground water recharge by promoting infiltration of stormwater in areas with appropriate soils and geology; to maintain the appropriate salinity regimes in estuaries needed to support the natural flora and fauna; and to address stormwater management on a watershed basis to provide cost effective water quality and water quantity solutions to specific watershed problems.

(b) Inadequate management of stormwater throughout a watershed increases stormwater flows and velocities, contributes to erosion and sedimentation, overtaxes the carrying capacity of streams and other conveyances, disrupts the functions of natural systems, undermines floodplain management and flood control efforts in downstream communities, reduces ground water recharge, threatens public health and safety, and is the primary source of pollutant loading entering Florida's rivers, lakes and estuaries, thus causing degradation of water quality and a loss of designated uses. Accordingly, it is a goal to eliminate the discharge of inadequately managed stormwater into waters and to minimize other adverse impacts on natural systems, property and public health, safety and welfare caused by improperly managed stormwater.

(c) It shall be a goal of stormwater management programs to reduce unacceptable pollutant loadings from older stormwater management systems, constructed before the adoption of Chapter 62-25, F.A.C., (February 1, 1982), by developing and implementing watershed management and stormwater master plans, or District-wide or basin-specific rules, or by implementing basin management action plans.

(3) Stormwater Management Program Implementation--As required by Section 403.0891, F.S., the Department, Districts and local governments shall cooperatively implement on a watershed basis a comprehensive stormwater management program designed to minimize the adverse effects of stormwater on land and water resources. Stormwater management programs shall use a combination of nonstructural and structural best management practices as needed to protect, maintain and restore the functions of natural systems and the designated uses of waters. The stormwater management program shall be implemented through the regulation of new surface water management systems under Part IV of Chapter 373, F.S., the regulation of existing stormwater management systems under the National Pollutant Discharge Elimination System stormwater program pursuant to section 403.0885, F.S., and through watershed management programs. All such programs shall be mutually compatible with the State Comprehensive Plan (Chapter 187, Florida Statutes), the Local Government Comprehensive Planning and Land Development Regulation Act (Chapter 163, Florida Statutes), the Surface Water Improvement and Management Act (Sections 373.451-.4595, F.S.), the Florida Watershed Restoration Act (section 403.067, F.S.), Chapters 373 and 403, F.S., and this chapter. Programs shall be implemented in a manner that will improve and restore the quality of waters that do not meet their designated uses, and maintain the water quality of those waters that meet them.

(a) The Department shall be the lead agency responsible for coordinating the statewide stormwater management program by establishing goals, objectives and guidance for the development and implementation of stormwater management programs by the Districts and local governments.

(b) The Districts that have implemented a comprehensive surface water management program under Part IV of Chapter 373 shall be the chief administrators of

the state stormwater management program. The Department shall implement the state's stormwater management program in Districts that do not have the economic and technical resources to implement a comprehensive surface water management program.

(c) The Department shall adopt TMDLs and the Department or the Districts, as appropriate to their responsibilities, shall set regional stormwater management goals and policies on a watershed basis, including stormwater pollutant load reduction goals necessary to preserve or restore designated uses of receiving waters. For water bodies that fully attain their designated use and meet the applicable state water quality standards, the pollutant load reduction goal shall be zero. Such goals and policies shall be implemented through District SWIM plans, through TMDLs adopted by the Department and their associated basin management action plans, through preparation of watershed management plans in other designated priority watersheds, and through appropriate regulations.

(d) Local governments shall establish stormwater management programs that are in accordance with the state and District stormwater quality and quantity goals. Local governments may establish a stormwater utility or other dedicated source of funding to implement a local stormwater management program which shall include the development and implementation of a stormwater master plan and provisions, such as an operating permit system, to ensure that stormwater systems are properly operated and maintained.

(e) Section 189.4155 of the Florida Statutes requires that special districts, such as water control districts created under chapter 298 of the Florida Statutes, must be consistent with the applicable local government comprehensive plan adopted under Part II, chapter 163 of the Florida Statutes, in the construction and expansion of public facilities, or in a major alteration which affects the quantity or quality of the level of service of a public facility. In order to be consistent with the goals and objectives of the water resource implementation rule, water control districts created pursuant to Chapter 298, F.S., or special act, and other special districts as defined in Section 189.403(1), F.S., which have water management powers are encouraged to:

1. Be consistent with Department and district stormwater quality and quantity goals for the construction and expansion of water control and related facilities.

2. Operate existing water control and related facilities consistent with applicable Department and district stormwater quality and quantity goals. Any modification or alteration of existing water control and related facilities shall be consistent with Department and district stormwater quality and quantity goals.

Specific Authority 373.026(7), 373.043, 373.036(1)(d), 373.171 FS. Law Implemented 373.023, 373.026, 373.036(1)(d), 373.046, 373.103, 373.171, 373.1961, 373.223, 373.413, 373.418, 373.451, 373.453, 403.064, 403.067, 403.0885 403.0891, 403.0893 FS. History – New 5-7-05.

62-40.432 Surface Water Management Regulation.

(1) The following shall apply to the regulation of surface water pursuant to Part IV, Chapter 373, Florida Statutes.

(a) The construction and operation of facilities which manage or store surface waters, or other facilities which drain, divert, impound, discharge into, or otherwise impact waters in the state, and the improvements served by such facilities, shall not be harmful to water resources or inconsistent with the objectives of the Department or District.

(b) In determining the harm to water resources and consistency with the objectives of the Department or District, consideration shall be given to:

1. The impact of the facilities on:
 - a. Water quality;
 - b. Fish and wildlife;
 - c. Wetlands, floodplains, estuaries, and other water resources;
 - d. Reasonable-beneficial uses of water;
 - e. Recreation;
 - f. Navigation;
 - g. Saltwater or pollution intrusion, including any barrier line established pursuant to Section 373.033, F.S.;
 - h. Minimum flows and levels established pursuant to Sections 373.042 and 373.0421, F.S.; and
 - i. Other factors relating to the public health, safety, and welfare;
2. Whether the facilities meet applicable design or performance standards;
3. Whether adequate provisions exist for the continued satisfactory operation and maintenance of the facilities; and
4. The ability of the facilities and related improvements to avoid increased damage to off-site property, water resources, natural systems or the public caused by:
 - a. Floodplain development, encroachment or other alteration;
 - b. Retardance, acceleration or diversion of flowing water;
 - c. Reduction of natural water storage capacity;
 - d. Facility failure; or
 - e. Other actions adversely affecting off-site water flows or levels.

(2) Minimum Stormwater Treatment Performance Standards.

(a) When a stormwater management system complies with rules establishing the design and performance criteria for such systems, there shall be a rebuttable presumption that the discharge from such systems will comply with state water quality standards. The Department and the Districts, pursuant to Section 373.418, F.S., shall, when adopting rules pertaining to stormwater management systems, specify design and performance criteria for new stormwater management systems which:

1. Achieve at least 80 percent reduction of the average annual load of pollutants that would cause or contribute to violations of state water quality standards.

2. Achieve at least 95 percent reduction of the average annual load of pollutants that would cause or contribute to violations of state water quality standards in Outstanding Florida Waters.

3. If a District or the Department adopts basin-specific design and performance criteria in order to achieve an adopted TMDL or the pollutant load reduction goals established in a watershed management plan, such design and performance criteria shall replace those specified in subparagraphs 1. and 2. above.

(b) Erosion and sediment control plans detailing appropriate methods to retain sediment on-site shall be required for land disturbing activities.

(c) The pollutant loading from older stormwater management systems shall be reduced as necessary to restore or maintain the designated uses of waters. Specific Authority 373.026(7), 373.043, 373.036(1)(d), 373.171 FS. Law Implemented 373.023, 373.026, 373.036(1)(d), 373.042, 373.0421, 373.103, 373.171, 373.1961, 373.223, 373.250, 373.413, 373.414, 373.416, 373.418, 373.451, 373.453, 403.064, 403.067, 403.0891 FS. History - New 2-20-91, Formerly 17-40.420, 17-40.432, Amended 7-20-95, 1-7-97, 5-7-05.

62-40.450 Flood Protection.

Flood protection shall be implemented within the context of other interrelated water management responsibilities. Florida will continue to be dependent on some structural water control facilities constructed in the past, and new structural facilities may sometimes be unavoidable in addressing existing and future flooding or other other water-related problems. However, the Department and the Districts shall promote nonstructural flood protection strategies.

(1) Flood Protection Responsibilities

(a) Local governments have the primary responsibility for regulating land use, enforcing construction criteria for flood prone areas, establishing local stormwater management levels of service, constructing and maintaining local flood control facilities, and otherwise preventing flood damages to new and existing development.

(b) District flood protection responsibilities relate primarily to serving regional water conveyance and storage needs. Districts have the authority to plan, construct, and operate water control facilities, as well as regulate discharges into works of the District or facilities controlled by the District.

(c) Rules adopted under Part IV of Chapter 373, F.S., shall require that appropriate precautions be taken to protect public health and safety in the event of failure of any water control structures, such as pumps and levees.

(d) Department and District programs shall discourage siting of incompatible public facilities in floodplains and flood prone areas wherever possible. Where no feasible alternative exists to siting an incompatible public facility in a floodplain or flood prone Area, the facility shall be designed to minimize flood damage risks and adverse impacts on natural flood detention and conveyance capabilities.

(e) Each District shall clearly define in its District Water Management Plan, in basin specific plans, or rules, the District's responsibilities related to flood emergencies, including its mechanisms for coordinating with emergency response agencies.

(2) District Facilities

(a) District water control facilities shall be operated and maintained in accordance with established plans or schedules.

(b) Districts shall assess the design characteristics and operational practices of existing District water control facilities to ascertain opportunities for minimizing adverse impacts on water resources and associated natural systems. Where feasible, facility design modifications or operational changes shall be implemented to enhance natural systems or fulfill other water management responsibilities.

Specific Authority 373.026(7), 373.043, 373.036(1)(d), 373.171 FS. Law Implemented 373.023, 373.026, 373.036(1)(d), 373.086, 373.103, 373.171, 373.413, 373.414, 373.416, 373.418, 403.0891 FS. History - New 7-20-95, Amended 5-7-05.

62-40.458 Floodplain Protection.

(1) The Department and the Districts shall provide leadership to protect and enhance the beneficial values of floodplains. This shall include active coordination with local governments, special districts, and related programs of federal agencies, the Department of Community Affairs, and the Department of Health. Nothing in this section is intended to diminish the Department's and District's responsibilities regarding flood protection.

(a) The Department and the Districts shall pursue development of adequate floodplain protection information, including:

1. District determination of flood levels for priority floodplains. At a minimum, this shall include the 100-year flood level, with other flood levels to be determined where needed for watershed-specific management purposes. Districts are encouraged to determine the 10-year flood level for the purpose of assisting the Department of Health to regulate septic tanks in floodplains pursuant to section 64E-6.007, F.A.C.

2. Identification of floodplains with valuable natural systems for potential acquisition.

3. Identification of floodplain areas having potential for restoration of natural flow regimes.

(b) The Department and the Districts shall develop jointly a comprehensive system of coordinated planning, management, and acquisition to protect and, where feasible, enhance floodplain functions and associated natural systems in floodplains. This system shall include implementation of policies and programs to:

1. Acquire and maintain valuable natural systems in floodplains.

2. Protect the natural water storage and water conveyance capabilities of floodplains.

3. Where feasible, enhance or restore natural flow regimes of rivers and watercourses that have been altered for water control purposes.

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(c) District regulatory programs shall minimize incompatible activities in floodplains. For regulated floodplains, each District, at a minimum, shall ensure that such activities:

1. Will not result in significant adverse effects on surface and ground water levels and surface water flows.
2. Will not result in significant adverse impacts to existing surface water storage and conveyance capabilities of the floodplain.
3. Will not result in significant adverse impacts to the operation of District facilities.
4. Will assure that any surface water management facilities associated with the proposed activity will be capable of being effectively operated and maintained.
5. Will not cause violations of water quality standards in receiving waters.
6. Will not otherwise be harmful to water resources.

(2) Each District shall provide to local governments and water control districts available information regarding floodplain delineation and floodplain functions and associated natural systems, and assist in developing effective measures to manage floodplains consistently with this Chapter.

Specific Authority 373.026(7), 373.043, 373.036(1)(d), 373.171 FS. Law Implemented 373.023, 373.026, 373.036(1)(d), 373.103, 373.171, 373.413, 373.414, 373.416, 373.418 FS. History - New 7-20-95, Amended 5-7-05.

62-40.470 Natural Systems Protection and Management --

Programs, plans, and rules to accomplish natural systems protection and management shall include rules to address adverse cumulative impacts, the establishment of minimum flows and levels (Rule 62-40.473, F.A.C.) and may include protection measures for surface water resources (Rules 62-40.425, 62-40.430, and 62-40.431, F.A.C.).

Specific Authority 373.026(7), 373.043, 373.036(1)(d), 373.171 FS. Law Implemented 373.023, 373.026, 373.036(1)(d), 373.042, 373.0421, 373.103, 373.171, 373.1961, 373.223, 373.246, 373.418, 403.0891 FS. History - New 7-20-95, Amended 5-7-05.

62-40.473 Minimum Flows and Levels.

(1) In establishing minimum flows and levels pursuant to Sections 373.042 and 373.0421, F.S., consideration shall be given to natural seasonal fluctuations in water flows or levels, nonconsumptive uses, and environmental values associated with coastal, estuarine, riverine, spring, aquatic, and wetlands ecology, including:

- (a) Recreation in and on the water;
- (b) Fish and wildlife habitats and the passage of fish;
- (c) Estuarine resources;
- (d) Transfer of detrital material;
- (e) Maintenance of freshwater storage and supply;
- (f) Aesthetic and scenic attributes;

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- (g) Filtration and absorption of nutrients and other pollutants;
- (h) Sediment loads;
- (i) Water quality; and
- (j) Navigation.

(2) Water bodies experience variations in water flows and levels that often contribute to significant functions of the system, such as those described in section 62-40.473(1), F.A.C. Minimum flows and levels should be expressed as multiple flows or levels defining a minimum hydrologic regime, to the extent practical and necessary to establish the limit beyond which further withdrawals would be significantly harmful to the water resources or the ecology of the area as provided in Section 373.042(1), F.S. However, a minimum flow or level need not be expressed as multiple flows or levels if other resource protection tools, such as reservations implemented to protect fish and wildlife or public health and safety, that provide equivalent or greater protection of the hydrologic regime of the water body, are developed and adopted in coordination with the minimum flow or level.

(3) Established minimum flows and levels shall be protected during the construction and operation of water resource projects and, where relevant, to the issuance of permits pursuant to Section 373.086 and Parts II and IV of Chapter 373, F.S.

(4) Established minimum flows and levels shall be protected during declaration of a water shortage pursuant to Section 373.175 or Section 373.246, Florida Statutes, except when the drought is of a severity that such protection would compromise public health and safety, or such protection would otherwise be inconsistent with the public interest as determined by the governing board.

(5) At the time of minimum flow or level is adopted, if a water body is below, or projected to go below its minimum flow or level, the District shall consider simultaneously developing the recovery or prevention strategy required by section 373.0421(2), F.S. The recovery or prevention strategy shall include phasing or a timetable which will allow for the provision of sufficient water supplies for all existing and projected reasonable-beneficial uses, including development of additional water supplies and implementation of conservation and other efficiency measures concurrent with, to the extent practical, and to offset, reductions in permitted withdrawals. In the development of a recovery or prevention strategy, the District shall consider the need for water resource or water supply development, additional regulatory measures, and implementation of additional water conservation measures.

Specific Authority 373.026(7), 373.043, 403.036(1)(d), 373.171 FS. Law Implemented 373.023, 373.026, 373.036(1)(d), 373.042, 373.0421, 373.086, 373.103, 373.171, 373.175, 373.1961, 373.223, 373.246, 373.250, 373.413, 373.414, 373.416, 373.418, 373.451, 373.453, 403.064, 403.0891 FS. History - New 5-5-81, Formerly 17-40.08, Amended 12-5-88, Formerly 17-40.080, 17-40.405, 17-40.473, Amended 7-20-95, 5-7-05.

62-40.474 Reservations.

(1) The governing board or the department, by rule, may reserve water for use by permit applicants, pursuant to section 373.223(4), F.S., in such locations and quantities, and for such seasons of the year, as in its judgment may be required for the protection of fish and wildlife or the public health and safety. Such reservations shall be subject to periodic review at least every five years, and revised if necessary in light of changed conditions. However, all presently existing legal uses of water shall be protected so long as such use is not contrary to the public interest.

(a) Reservations may be used for the protection of fish and wildlife to:

1. Aid in a recovery or prevention strategy for a water resource with an established minimum flow or level;

2. Aid in the restoration of natural systems which provide fish and wildlife habitat;

3. Protect flows or levels that support fish and wildlife before harm occurs;

4. Protect fish and wildlife within an Outstanding Florida Water, an Aquatic Preserve, a state park, or other publicly owned conservation land with significant ecological value; or

5. Prevent withdrawals in any other circumstance required to protect fish and wildlife.

(b) Reservations may be used for the protection of public health and safety to:

1. Prevent sinkhole formation;

2. Prevent or decrease saltwater intrusion;

3. Prevent the movement or withdrawal of groundwater pollutants; or

4. Prevent withdrawals in any other circumstance required to protect public health and safety.

(2) Reservations shall, to the extent practical, clearly describe the location, quantity, timing, and distribution of the water reserved.

(3) Reservations can be adopted prospectively for water quantities anticipated to be made available. When water is reserved prospectively, the reservation rule shall state when the quantities are anticipated to become available and how the reserved quantities will be adjusted if the actual water made available is different than the quantity anticipated.

(4) The District shall conduct an independent scientific peer review of all scientific or technical data, methodologies, and models, including all scientific and technical assumptions employed in each model, used to establish a reservation if the District determines such a review is needed. As part of its determination of the necessity of conducting a peer review, the District shall consider whether a substantially affected person has requested such a review.

Specific Authority 373.026(7), 373.043, 373.036(1)(d), 373.171 FS. Law Implemented 373.023, 373.026, 373.036(1)(d), 373.042, 373.046, 373.103, 373.106, 373.171, 373.175, 373.1961, 373.223, 373.246, 373.418, 373.451, 373.453, 403.0891 FS. History – New 5-7-06.

62-40.475 Protection Measures for Surface Water Resources. (Repealed)
Specific Authority 373.026(7), 373.043, 373.036(1)(d), 373.171 FS. Law Implemented 373.023, 373.026, 373.033, 373.036(1)(d), 373.0391, 373.0395, 373.042, 373.046, 373.086, 373.103, 373.106, 373.171, 373.175, 373.185, 373.1961, 373.223, 373.246, 373.413, 373.4135, 373.414, 373.416, 373.418, 373.423, 373.429, 373.451, 373.453, 403.0615(3), 403.064, 403.0891 FS. History - New 7-20-95, Repealed 5-7-05.

**PART V
WATER PROGRAM DEVELOPMENT**

62-40.510 Florida Water Plan.

- (1) In cooperation with the water management districts, regional water supply authorities, and others, the Department shall develop the Florida Water Plan pursuant to section 373.036, F.S. The Florida Water Plan shall include:
- (a) The programs and activities of the Department related to water supply, water quality, flood protection and floodplain management, and natural systems;
 - (b) The water quality standards of the Department;
 - (c) The District Water Management Plans;
 - (d) Performance measures;
 - (e) This chapter;
 - (f) Department overview, including a discussion of the interrelationships of Department and District programs;
 - (g) Water management goals and responsibilities, including the following areas of responsibilities:
 - 1. water supply protection and management,
 - 2. flood protection and management,
 - 3. water quality protection and management, and
 - 4. natural systems protection and management;
 - (h) Statewide water management implementation strategies for each area of responsibility;
 - (i) Intergovernmental coordination, including the Department's processes for general supervision of the water management districts;
 - (j) Procedures for plan development, including public participation;
 - (k) Methods for assessing program effectiveness and the Department's progress toward implementation of the Plan;
 - (l) Linkages to Department rulemaking, budgeting, program development, and legislative proposals; and
 - (m) Strategies to identify the amount and sources of supplemental funding to implement the programs identified in Chapter 373, District Water Management Plans, this Chapter, and any delegated programs.

Effective 5-7-06

(2) At a minimum, the Florida Water Plan shall be updated every five years after the initial plan development. Annual status reports on the Plan shall also be prepared by the Department.

Specific Authority 373.026(7), 373.043, 373.036(1)(d), 373.171 FS. Law Implemented 373.023, 373.026, 373.033, 373.036(1), 373.0391, 373.0395, 373.042, 373.0421, 373.046, 373.103, 373.171, 373.175, 373.185, 373.1961, 373.223, 373.246, 373.250, 373.413, 373.4135, 373.414, 373.416, 373.418, 373.423, 373.429, 373.451, 373.453, 403.0615(3), 403.064, 403.0891 FS. History - New 7-20-95, Amended 5-7-05.

62-40.520 District Water Management Plans.

(1) Each District shall develop a comprehensive water management plan, based on at least a 20-year planning period, which is consistent with the provisions of this Chapter and Subsection 373.036(2), Florida Statutes. District Water Management Plans are comprehensive guides to the Districts in carrying out all their water resource management responsibilities, including water supply, flood protection, water quality management, and protection of natural systems. The plans shall provide general directions and strategies for District activities, programs, and rules. They will be implemented by a schedule of specific actions of the District, which may include program development, water resource projects, land acquisition, funding, technical assistance, facility operations, and rule development.

(2) Districtwide water supply assessments shall be developed in accordance with the provisions of subparagraph 373.036(2)(b)4., F.S. The assessment shall determine whether sources of water are adequate to supply water for all existing and projected reasonable-beneficial uses and to sustain the water resources and related natural systems. If it is determined that sources of water are not adequate, the affected area shall have a regional water supply plan developed in accordance with section 373.0361, F.S. and section 62-40.531, F.A.C. The determinations shall be updated at least every 5 years. Within one year of the determination that a regional water supply plan is needed for a water supply planning region, the region shall also be designated as a water resource caution area. Domestic wastewater treatment facilities which are located within, or serve a population located within, or discharge within water resource caution areas shall be subject to the reuse requirements of subsection 403.064, F.S.

(3) Based on economic, environmental, and technical analyses, a course of remedial or preventive action shall be specified for each current and anticipated future water resource problem that is identified in the District Plan.

(4) Remedial or preventive measures shall include consideration of measures such as: water supply development projects; water resource development projects; water resources restoration projects pursuant to Section 403.0615, Florida Statutes; purchase of lands; conservation of water; development of alternative supplies such as desalination, aquifer storage and recovery, reuse of reclaimed water and recycling of stormwater and industrial wastewater; enforcement of Department or District rules; and

actions taken by local government pursuant to a local government comprehensive plan, local ordinance, or zoning regulation.

(5) District Plans shall also identify areas where collection of data, water resource investigations, water resource development or conservation projects, or the implementation of regulatory programs are necessary to address water resource problems.

(6) District plans shall address, at a minimum, the following subjects:

(a) District overview;

(b) Water management goals;

(c) Water management responsibilities, including:

1. Water supply protection and management, to include source protection and regional water supply planning.

2. Flood protection and floodplain management. This shall include the District's strategies and priorities for managing facilities and floodplains, and a schedule for District mapping of floodplains.

3. Water quality protection and management for both surface water and ground water. This shall include the District's strategies, priorities, and schedules to develop pollutant load reduction goals and any basin-specific rules as needed to assure that a TMDL is met; and

4. Natural systems protection and management. This shall reflect the schedule for establishing minimum flows and levels required by Section 373.0421, F.S.

(d) For each water management responsibility, the following shall be included:

1. Resource assessments, including identification of regionally significant water resource issues and problems within the District;

2. Water management policies for identified issues and problems;

3. Implementation strategies for each issue and problem, including tasks, schedules, responsible entities, and measurable benchmarks.

(e) Integrated plan, describing how the water problems of each county in the District are identified and addressed;

(f) Intergovernmental coordination, including measures to implement the plan through coordination with the plans and programs of local, regional, state and federal agencies and governments; and

(g) Procedures for plan development, including definitions and public participation.

(7) A District Water Management Plan is intended to be a planning document and is not self-executing.

(8) At a minimum, District Plans shall be updated and progress assessed every five years. Each District shall include in the Plan a procedure for evaluation of the District's progress towards implementing the Plan. Such procedure shall occur at least annually and a copy of the evaluation shall be provided to the Department each year by November 15 for review and comment.

(9) Plan development shall include adequate opportunity for participation by the public and governments. Districts shall be deemed to have afforded adequate opportunity for participation to the public and governments, by holding public workshops with advance notice by publication as required by law. Districts shall hold public workshops at least 90 days before Plan acceptance or amendment by the Governing Board. At the workshops, a preliminary list of schedules to be included in the Plan shall be presented.

Specific Authority 373.026(7), 373.043, 403.036(1)(d), 373.171 FS. Law Implemented 373.023, 373.026, 373.033, 373.036, 373.0361, 373.0391, 373.0395, 373.042, 373.0421, 373.046, 373.086, 373.103, 373.171, 373.175, 373.185, 373.1961, 373.223, 373.246, 373.250, 373.413, 373.414, 373.416, 373.418, 373.423, 373.429, 373.451, 373.453, 403.0615, 403.064, 403.067, 403.0891 FS. History - New 5-5-81, Formerly 17-40.09, Amended 12-5-88, Formerly 17-40.090, Amended 8-14-90, 12-17-91, Formerly 17-40.501, 17-40.520, Amended 7-20-95, 1-7-97, 5-7-05.

62-40.530 Department Review of District Water Management Plans.

(1) After acceptance by the District Governing Board, District Water Management Plans shall be submitted to the Department.

(2) Within sixty days after receipt of a Plan for review, the Department shall review each Plan for consistency with this Chapter and recommend any changes to the Governing Board.

(3) After consideration of the comments and recommendations of the Department, the Governing Board shall, within sixty days, either incorporate the recommended changes into the Plan or state in the Plan, with specificity, the reasons for not incorporating the changes.

(4) Plan amendments shall follow the same process as for initial Plan acceptance.

Specific Authority 373.026(7), 373.043, 373.036(1)(d), 373.171 FS. Law Implemented 373.023, 373.026, 373.033, 373.036(1)(d), 373.0391, 373.0395, 373.042, 373.046, 373.086, 373.103, 373.106, 373.171, 373.175, 373.185, 373.1961, 373.223, 373.246, 373.413, 373.4135, 373.414, 373.416, 373.418, 373.423, 373.429, 373.451, 373.453, 403.0615(3), 403.064, 403.0891 FS. History - New 7-20-95.

62-40.531 Regional Water Supply Plans.

(1) As part of the District Water Management Plans, each governing board shall develop a regional water supply plan for each water supply planning region for which the districtwide water supply assessment determines that sources of water are not adequate to supply water for all existing and projected reasonable-beneficial uses and to sustain the surface and ground water resources and related natural systems. The planning shall be conducted in an open public process, in coordination and cooperation with local governments, regional water supply authorities, government-owned and privately owned water utilities, self-suppliers, and other affected and

interested parties. As part of meeting the requirements of Section 373.0361, F.S., for regional water supply plans:

(a) The planning horizon shall be at least 20 years and shall include intermediate water use projections for every 5 year interval.

(b) Water use estimates and projections shall be provided for the following use classes:

1. Public Supply,
2. Domestic Self Supply,
3. Agriculture,
4. Recreational Irrigation,
5. Industrial/Commercial/Institutional,
6. Thermoelectric.

(c) The University of Florida's Bureau of Economic and Business Research (BEBR) medium population projections shall be considered for population projections. Any adjustment or deviation from the BEBR projections shall be fully described and the original BEBR data shall be presented along with the adjusted data.

(2) Each plan shall fully evaluate water resource and water supply development options, including the potential for water conservation, and alternative sources such as desalination, aquifer storage and recovery, use of surface water reservoirs, and reuse of reclaimed water, to meet the regional demands.

(3) Conservation and reuse shall be evaluated to the same degree as other options.

(4) Each plan shall include water supply development projects as defined in Section 373.019(21), F.S. Water supply development projects generally include activities intended to benefit specific individual utilities or other users. Examples include the following types of projects when they provide a localized benefit: wellfields, aquifer storage and recovery wells, desalination facilities, water storage reservoirs, conservation programs to improve water use efficiency, and reuse facilities.

(5) Each plan shall provide a list of water resource development projects as defined in Subsection 373.019 (19), F.S. Water resource development projects generally include those intended to provide regional benefits as opposed to utility-specific or localized benefits. A project that benefits a specific utility may be classified as a water resource development project if that project provides a regional benefit. Examples include the following types of projects when they provide regional benefits: aquifer recharge, aquifer storage and recovery systems, water storage reservoirs, reuse of reclaimed water projects, and water conservation programs to improve water use efficiency. Water resource development may also include studies that match reclaimed water generators with users, feasibility studies, pilot projects, demonstration projects, and mobile irrigation labs.

(6) The Regional Water Supply Plan shall include any recovery or prevention strategy developed for an adopted minimum flow or level, and account for any existing reservations of water.

(7) At the time a district updates its regional water supply plan, if the district intends to establish water reservations, it shall include in its plan a priority list and schedule for the establishment of the proposed reservations. However, nothing in this subsection shall preclude a district from adopting a rule establishing a water reservation not identified on the priority list or schedule.

(8) Each plan, or the determination of the need for a plan, shall be updated at least every 5 years.

Specific Authority 373.026(7), 373.043, 373.036(1), 373.036(2), 373.171 FS. Law Implemented 373.023, 373.026, 373.036(1)(d), 373.0395, 373.042, 373.046, 373.103, 373.106, 373.171, 373.1961, 373.223, 373.246, 373.418, 373.451, 373.453, 403.0615(3), 403.064, 403.0891 FS. History - New 5-7-05.

62-40.540 Water Data.

(1) All local governments, water management districts, and state agencies are directed by Section 373.026(2), F.S., to cooperate with the Department in making available to the Department such scientific or factual data as they may possess. The Department shall prescribe the format and ensure the quality control for all water quality data collected or submitted.

(2) The Department is the state's lead water quality monitoring agency and central repository for surface water and ground water information. The Department shall coordinate Department, District, state agency, and local government water quality monitoring activities to improve data and reduce costs.

(3) The Department's FLORIDA STORET water quality data base shall be the central repository of the state's water quality data. To assure that it is readily available to the public and for use in the Department's watershed management program, all appropriate water quality data collected by the Department, Districts, local governments, and state agencies shall be placed in the FLORIDA STORET system within one year of collection.

(4) The Department's biennial state water quality assessment (the "305(b) Report") shall be the state's general guide to water quality assessment and should be used as the basis for assessments unless more recent, more accurate, or more detailed information is available. The 305(b) report shall be based, in part, on the assessment methodology set forth in Chapter 62.303, F.A.C.

(5) Appropriate monitoring of water quality and water withdrawal shall be required of permittees.

(6) The Districts shall implement a strategy for measuring, estimating, and reporting withdrawal and use of water by permitted and exempted users. Thresholds for measurement requirements and reporting applicable to permittees shall be established and adopted by rule; however, all water use permits for more than an annual average of 100,000 gallons per day shall require that the use be measured by a cost-effective method. This information shall be reported to the Districts at reasonable intervals. The

Districts are encouraged to summarize and analyze water use in the District at least annually.

(7) The Department and the Districts shall coordinate in the development and implementation of a standardized computerized statewide data base and methodology to track activities authorized by environmental resource permits in wetlands and waters of the state. The data base will be designed to provide for the rapid exchange of information between the Department and the Districts. The Department will serve as the central repository for environmental resource permit data and shall specify the data base organization and electronic format in which the data are to be provided by the Districts.

Specific Authority 373.026(7), 373.043, 373.036(1)(d), 373.171 FS. Law Implemented 373.023, 373.026, 373.036(1)(d), 373.103, 373.171, 373.413, 373.414, 373.418 FS. History - New 7-20-95, Amended 5-7-05.

PART VI WATER PROGRAM ADMINISTRATION AND EVALUATION

62-40.610 Review and Application.

(1) This Chapter shall be reviewed periodically, but in no case less frequently than once every four years.

(2) Within 12 months after adoption or revision of this Chapter, the Districts shall have revised their rules and reviewed their programs to be consistent with the provisions contained herein.

(3) District rules adopted after this Chapter takes effect shall be reviewed by the Department for consistency with this Chapter.

(4) At the request of the Department, each District shall initiate rulemaking pursuant to Chapter 120, Florida Statutes, to consider changes the Department determines to be necessary to assure consistency with this Chapter. The Department shall be made a party to the proceeding.

(5) District water policies may be adopted which are consistent with this Chapter, but which take into account differing regional water resource characteristics and needs.

(6) A District shall initiate rulemaking or program review to consider implementation of programs pursuant to Sections 373.033, 373.042, 373.106, Part III, or Part IV of Chapter 373, Florida Statutes, where the Department or District determines that present or projected conditions of water shortages, saltwater intrusion, flooding, drainage, or other water resource problems, prevent or threaten to prevent the achievement of reasonable-beneficial uses, the protection of fish and wildlife, or the attainment of other water resource implementation rule directives.

(7) The Department and Districts shall assist other governmental entities in the development of plans, ordinances, or other programs to promote consistency with this Chapter and District water management plans.

Effective 5-7-06

Specific Authority 373.026(7), 373.043, 373.036(1)(d), 373.171 FS. Law Implemented 373.023, 373.026, 373.033, 373.036(1)(d), 373.0391, 373.0395, 373.042, 373.0421, 373.103, 373.106, 373.114, 373.171, 373.1961, 373.223, 373.246, 373.250, 373.418, 403.064, 403.0891 FS. History - New 5-5-81, Formerly 17-40.10, 17-40.100, Amended 12-17-91, Formerly 17-40.601, 17-40.610, Amended 7-20-95, 5-7-05.