



The Water Cooperative of Central Florida

Wednesday, April 6, 2016

2:00 PM

Toho Administration Building

951 MLK Boulevard

Kissimmee, FL 34741

Agenda

1. APPROVAL OF THE BOARD MEETING MINUTES FROM JANUARY 6, 2016
2. APPROVAL OF REIMBURSEMENT OF EXPENDITURES TO DATE BY TOHO WATER AUTHORITY ON BEHALF OF THE WATER COOPERATIVE OF CENTRAL FLORIDA
3. APPROVAL OF THE DRAFT WATER COOPERATIVE BUDGET FOR FISCAL YEAR 2017
4. STATUS REPORT FOR THE CYPRESS LAKE ALTERNATIVE WATER SUPPLY PROJECT
5. REPORT BY GENERAL COUNSEL ON CENTRAL FLORIDA WATER INITIATIVE REPRESENTATION

NEXT MEETING WEDNESDAY, JULY 13, 2016

Description	Regular meeting of the Water Cooperative of Central Florida (WCCF). Present at the meeting were TWA Board Chairman Bruce Van Meter, Polk County Commissioner George Lindsey, Orange County Commissioner Peter Clarke, City of St. Cloud Commissioner Donald Shroyer, TWA Executive Director Brian L. Wheeler, Silvia Alderman, WCCF Counsel and Executive Assistant Nilsa C. Diaz.			
Date	01/06/2016	Location	Tohopekaliga Water Authority Board Room	
	ITEM	NOTES		
2:01 PM	MEETING CALLED TO ORDER	Chairman Van Meter called the meeting to order at 2:00 PM.		
	1. APPROVAL OF THE BOARD MEETING MINUTES FROM JULY 8, 2015	Supervisor Lindsey moved for approval of the meeting minutes from the Water Cooperative Board meeting of July 8, 2015 as circulated. Supervisor Shroyer seconded the motion. Motion passed 3 to 0.		
	2. APPROVAL OF REIMBURSEMENT OF EXPENDITURES TO DATE BY TOHO WATER AUTHORITY ON BEHALF OF THE WATER COOPERATIVE OF CENTRAL FLORIDA	<table border="1" data-bbox="623 1203 1419 1549"> <tr> <td>TWA Executive Director Brian Wheeler, Agent for the WCCF, summarized the expenditures TWA made on behalf of the Water Cooperative of Central Florida (WCCF) during the last quarter of FY2015 and are being submitted for reimbursement. The total amount of expenditures for this period was \$29,980.93. Supervisor Lindsey moved for approval of the reimbursement to TWA. Supervisor Shroyer seconded the motion. Motion passed 3 to 0.</td> </tr> </table>		TWA Executive Director Brian Wheeler, Agent for the WCCF, summarized the expenditures TWA made on behalf of the Water Cooperative of Central Florida (WCCF) during the last quarter of FY2015 and are being submitted for reimbursement. The total amount of expenditures for this period was \$29,980.93. Supervisor Lindsey moved for approval of the reimbursement to TWA. Supervisor Shroyer seconded the motion. Motion passed 3 to 0.
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	3. APPROVAL OF A CONSULTANT CONTRACT AND SCOPE OF SERVICES PROPOSAL WITH RAFTELIS	TWA Executive Director Brian Wheeler reviewed the background for a cost allocation study for the WCCF. He informed the Board a Request For Qualifications (RFQ) had been advertised on August 3, 2015 for a qualified firm to assist in the development of a cost allocation and finance model to provide the basis for charging each partner of the Cooperative for the "wheeling of water"		

	<p>FINANCIAL GROUP FOR THE CYPRESS LAKE INFRASTRUCTURE COST ALLOCATION STUDY (WATER WHEELING RATE STUDY)</p>	<p>between the parties. Three firms responded to the inquiry, Raftelis Financial Consultants, Burton & Associates, and Willdan. Based on qualifications and understanding of the project, the Selection Committee selected the Raftelis Financial Consultants group.</p> <p>The contract proposal negotiated with Raftelis in the amount of \$148,860 is within the Cooperative's project budget of \$150,000. TWA, as project administrator, will contract with Raftelis, issue a purchase order, and be reimbursed by each participant in accordance with their proportional share after payment of each Consultant invoice. Supervisor Shroyer moved for approval of the contract with Raftelis Financial Group and Supervisor Lindsey seconded the motion. Motion passed 3 to 0.</p>
	<p>4. APPROVAL OF THE TETRATECH SCOPE OF WORK AND FEE FOR THE ALTERNATIVE MEMBRANE CONCENTRATE DISPOSAL PERMITTING EFFORT (Revised)</p>	<p>TWA Executive Director Wheeler explained that representatives of the WCCF have been working with the consultant TetraTech on developing a scope of work for the permitting of the injection of membrane concentrate into the lower portion of the Lower Floridan Aquifer as an alternative to disposal through a deep well injection. Before the draft scope of work and fee were completed, Florida Department of Environmental Protection recommended a meeting to discuss the permitting of the concentrate disposal alternative. Based on this meeting, TetraTech has revised their scope of work. The now proposed \$66,944.00 fee for the pre-permitting effort is within the proposed budget of \$150,000. While no changes are anticipated, staff is requesting a 10% contingency in the amount of \$6,700 to cover any changes requested by the project managers.</p> <p>(2:10 PM - Commissioner Peter Clarke arrived at the meeting.)</p> <p>Supervisor Lindsey made a motion for the approval of the revised scope of work and fee with TetraTech. Supervisor Shroyer seconded the motion. Motion passed 4 to 0.</p>
	<p>5. CENTRAL FLORIDA WATER</p>	<p>TWA Executive Director Wheeler and Silvia Alderman jointly provided an update of the Central Florida Water Initiative (CFWI).</p>

	INITIATIVE UPDATE	<p>TWA Executive Director Wheeler summarized the CFWI Next Steps and the four motions the CFWI Steering Committee adopted providing guidance for the Next Steps. The new CFWI teams were outlined.</p> <p>Silvia Alderman provided a summary of the actions of the CFWI Regulatory Team over the past quarter and outlined the team's goals for the Next Steps of CFWI. The Regulatory Team has eight specific regulatory issues that are to be addressed for the CFWI. Supervisor Lindsey asked if there had been any discussion about the water use permits. Ms. Alderman responded that not that there has not been any discussion to date. .</p> <p>There was an inquiry from the Board about the status of the major water bill before the legislature. Ms. Alderman and Executive Director Wheeler advised that the bill was set and would be acted upon early in the legislative session.</p>
	BOARD MEMBER COMMENTS	
2:38 PM	ADJOURNED	<p>There being no further business to come before the Board, Chairman Van Meter adjourned the meeting at 2:38 PM.</p> <p>_____</p> <p>Bruce R. Van Meter, Chairman</p> <p>_____</p> <p>Peter Clarke, Secretary</p> <p style="text-align: right;">ncd</p>

CATEGORY: Water Cooperative of Central Florida

Attachments: Itemized list of expenditures by Toho Water Authority from December 15, 2015 – March 3, 2016)

APPROVAL OF REIMBURSEMENT OF EXPENDITURES TO DATE BY TOHO WATER AUTHORITY ON BEHALF OF THE WATER COOPERATIVE OF CENTRAL FLORIDA

Explanation: The Board of Supervisors adopted a resolution at the October 2, 2013 meeting authorizing the reimbursement of expenses incurred by Toho Water Authority (TWA) on behalf of the Water Cooperative on a quarterly basis. The resolution allows the Authority to submit a detailed list of expenses incurred each quarter to the Board for approval for reimbursement. Under the resolution, the TWA could be reimbursed quarterly during the year instead of once annually as was done for the previous fiscal year. The attached list of expenditures, made to date by TWA on behalf of the Water Cooperative, is being submitted for approval for reimbursement contingent upon the Board approving the authorizing resolution.

Recommendation: Staff recommends approval of the list of expenditures submitted to date for reimbursement to the TWA.

Reimbursement TWA expense.04.06.2016 blw

Attachment to Item 2

Toho Water Authority List of Expenditures on behalf of the Water Cooperative of Central Florida (December 15, 2015 to March 3, 2016)

Vendor	Date	Invoice	Amount
Typo on 1/6/16 Coop Agenda item resulted in overpayment			(\$0.74)
Osceola News Gazette	12/15/2015	00005126	\$112.76
Akerman LLP	1/6/2016	9089177	\$6,110.00
Akerman LLP	1/6/2016	9089176	\$1,105.00
The Ledger	12/27/2015	L060G0H9L4	\$131.83
Orlando Sentinel	12/16/2015	3824781	\$106.92
Akerman LLP	2/4/2016	9097873	\$5,667.71
Akerman LLP	2/4/2016	9097875	\$1,657.50
Akerman LLP	3/3/2016	9106408	\$4,010.64
		TOTAL	\$18,901.62

CATEGORY: Water Cooperative of Central Florida

Attachment: Draft Budget Fiscal Year October 1, 2016 – September 30, 2017
FY2016 Year Ending Budget Estimate
Current FY2015 Budget Report – April 1, 2016

APPROVAL OF THE DRAFT WATER COOPERATIVE BUDGET FOR FISCAL YEAR 2017

Explanation: The draft budget for FY2017 contains the same expense items as contained in this year's (FY2016) budget. Legal expenses category continues to contain a line item for the continued representation of the Water Cooperative in the Central Florida Water Initiative (CFWI) which was approved initially in FY2014 as a mid-year budget revision. Though the need for the representation was anticipated to end the second quarter of FY2015 the regulatory consistency initiatives resulting from the CFWI Solutions Phase will continue into FY2017. Legal fees also continue to include an item associated with the property and easement acquisitions for the Cypress Lake project. The property and easement expenses in the budget do not include the actual cost or payment to the property owner for property or easement acquisition. Those costs will be established through appraisal and negotiations and will be approved by the board in a separate action.

Revenue for the draft budget is to be provided through a projected reserve carry-over of \$31,931 from FY2016 and a \$25,000 contribution from each of the four member governments. The draft budget provides for an estimated ending year reserve of \$9431.00. The only funding approval that will be necessary from each member government to fund the proposed draft budget is the \$25,000 contribution.

In accordance with the Interlocal agreement establishing the Water Cooperative, the budget process requires the submission of a proposed budget to the member governments a minimum of 30 days in advance of adopting the annual budget. The draft budget document should be approved by the Board of Supervisors for submission to the member governments in advance of final approval. After the required comment period for the governments has passed, the Board would be able to formally approve the budget with any modifications suggested by any of the member governments at the October Board meeting.

Recommendation: Staff recommends approval of the draft budget for Fiscal Year 2017 as presented for submission to the member governments for comment.

Water Coop Draft Budget FY2017 .04.06.16 blw

**Water Cooperative of Central Florida
Proposed FY2017 Budget**

Proposed Budget

Income -- Annual Working Capital Contributions

Reserves Carry-over	\$31,931.00
Reimbursement from Reedy Creek Improvement District	\$20,000.00
Toho Water Authority	
General Administration	\$25,000.00
Cypress Lake Project Management	\$0.00
Orange County	
General Administration	\$25,000.00
Cypress Lake Project Management	\$0.00
City of St. Cloud	
General Administration	\$25,000.00
Cypress Lake Project Management	\$0.00
Polk County	
General Administration	\$25,000.00
Cypress Lake Project Management	\$0.00

Miscellaneous Income

Reedy Creek Improvement District	
Cypress Lake Project Management	\$0.00
Interest on SunTrust Account	\$0.00

TOTAL **\$151,931.00**

Expenses

Water Supply Project Management and Administration	
Reimbursement to Toho Water Authority	\$0.00
Advertising Meetings	\$1,000.00
Legal Expense	
Meetings (4 regular & 1 special)	\$10,000.00
Central Florida Water Initiative	\$120,000.00
Property and Easement Acquisition	\$5,000.00
Miscellaneous	\$1,000.00
Total Legal	<u>\$136,000.00</u>
Accounting (Annual Report)	\$4,000.00
Annual Filings	\$500.00
Board Expenses	<u>\$1,000.00</u>

TOTAL **\$142,500.00**

NET RESERVES **\$9,431.00**

Water Cooperative of Central Florida
FY2016 -- Year End Estimate as of 3/30/2016

	<u>Final Budget</u>	<u>YTD Actuals</u>
Income -- Annual Working Capital Contributions		
Reserves Carry-over	\$31,520.00	\$50,630.49
Reimbursement from Reedy Creek Improvement District	\$35,287.00	\$22,373.00
Toho Water Authority		
General Administration	\$20,000.00	\$20,000.00
Cypress Lake Project Management	\$0.00	
Orange County		
General Administration	\$20,000.00	\$20,000.00
Cypress Lake Project Management	\$0.00	
City of St. Cloud		
General Administration	\$20,000.00	\$20,000.00
Cypress Lake Project Management	\$0.00	
Polk County		
General Administration	\$20,000.00	\$20,000.00
Cypress Lake Project Management	\$0.00	
Miscellaneous Income		
Reedy Creek Improvement District		
Cypress Lake Project Management	\$0.00	\$0.00
Interest on SunTrust Account	<u>\$0.00</u>	<u>\$0.00</u>
TOTAL	<u>\$146,807.00</u>	<u>\$153,003.49</u>
Expenses		
Water Supply Project Management and Administration		
Reimbursement to Toho Water Authority	\$0.00	\$0.00
Advertising Meetings	\$1,000.00	\$351.51
Legal Expense		
Meetings (4 regular & 1 special)	\$10,000.00	\$10,000.00
Central Florida Water Initiative	\$120,000.00	\$106,545.61
Property and Easement Acquisition	\$5,000.00	
Miscellaneous	<u>\$1,000.00</u>	
Total Legal	\$136,000.00	<u>\$116,545.61</u>
Accounting (Annual Report)	\$4,000.00	\$4,000.00
Annual Filings	\$500.00	\$175.00
Board Expenses	<u>\$1,000.00</u>	
TOTAL	<u>\$142,500.00</u>	<u>\$121,072.12</u>
NET RESERVES	<u>\$4,307.00</u>	<u>\$31,931.37</u>

Water Cooperative of Central Florida
FY2016 -- YTD as of 3/30/2016

	<u>Final Budget</u>	<u>YTD Actuals</u>
Income -- Annual Working Capital Contributions		
Reserves Carry-over	\$31,520.00	\$50,630.49
Reimbursement from Reedy Creek Improvement District	\$35,287.00	\$3,973.46
Toho Water Authority		
General Administration	\$20,000.00	\$20,000.00
Cypress Lake Project Management	\$0.00	
Orange County		
General Administration	\$20,000.00	\$20,000.00
Cypress Lake Project Management	\$0.00	
City of St. Cloud		
General Administration	\$20,000.00	\$20,000.00
Cypress Lake Project Management	\$0.00	
Polk County		
General Administration	\$20,000.00	\$20,000.00
Cypress Lake Project Management	\$0.00	
Miscellaneous Income		
Reedy Creek Improvement District		
Cypress Lake Project Management	\$0.00	\$0.00
Interest on SunTrust Account	\$0.00	\$0.00
<u>TOTAL</u>	<u>\$146,807.00</u>	<u>\$134,603.95</u>
Expenses		
Water Supply Project Management and Administration		
Reimbursement to Toho Water Authority	\$0.00	\$0.00
Advertising Meetings	\$1,000.00	\$351.51
Legal Expense		
Meetings (4 regular & 1 special)	\$10,000.00	\$4,664.09
Central Florida Water Initiative	\$120,000.00	\$29,545.61
Property and Easement Acquisition	\$5,000.00	
Miscellaneous	\$1,000.00	
Total Legal	\$136,000.00	\$34,209.70
Accounting (Annual Report)	\$4,000.00	\$0.00
Annual Filings	\$500.00	\$175.00
Board Expenses	\$1,000.00	
<u>TOTAL</u>	<u>\$142,500.00</u>	<u>\$34,736.21</u>
<u>NET RESERVES</u>	<u>\$4,307.00</u>	<u>\$99,867.74</u>

CATEGORY: Water Cooperative of Central Florida

Attachments: None

STATUS REPORT FOR THE CYPRESS LAKE ALTERNATIVE WATER SUPPLY PROJECT

Explanation: Ms. Deborah Beatty, project manager for the Cypress Lake Alternative Water Supply Project, will provide a brief report on the status of the project and progress since the January 6, 2016 Water Cooperative Board meeting.

Recommendation: No action required by the Board.

Cypress Lake Alternative Water Supply Project Status Report.04.06.16db

Agenda: Water Cooperative of Central Florida

Attachments: Senate Bill 552 (Water Bill) Summary

STOPR+2 Proposed FDEP Guidance Memorandum Revisions

REPORT ON THE STATUS OF THE CENTRAL FLORIDA WATER INITIATIVE

Explanation: The Board of Supervisors requested that a briefing be provided on the status of the Central Florida Water Initiative (CFWI) at the meetings. Silvia Alderman, General Counsel for the Cooperative, will provide a status report for the Board on the CFWI and related matters.

Recommendation: No action is required.

04.06.16 BLW



Practice Update

New Water Law Will Affect Everyone Who Uses Water in Florida

January 21, 2016

By **Silvia M. Alderman**

On January 14, 2016, the officers of the Legislature presented CS/CS/SB 552 to Governor Scott for signature. More famously known as the "Water Bill," this 134-page page marvel of compromise proves that it is still possible to pass controversial legislation in Florida today, even if it takes two years to do so. And, indeed, there is something in the law of interest to every homeowner, land developer, institutional user, farmer, utility, governmental unit and environmentalist, including plans for the allocation of limited water resources, development of new water projects, protection of Florida springs and regulation of discharges to impaired waters.

Origins

To understand the Water Bill, one needs to know the origin of much of it. Simply put, significant portions of Florida do not have enough water reserves from traditional groundwater sources to sustain continued growth. This dilemma has sparked the need to promote or even require development of alternative water supplies and to adopt additional limitations on withdrawals from traditional groundwater sources. Alternative water supplies include innovative solutions that do not involve withdrawal of water from traditional groundwater sources. Such solutions include implementation of graywater, stormwater and brackish water projects to augment existing sources.

In addition to the threat of diminishing water supplies, continued concern for Florida's premier springs brought about the creation of a new regulatory category to afford them special protection, together with associated development limitations and remediation plans. Additional protections have also been afforded to help remediate impaired water bodies throughout the state, but particularly the ecosystems in south Florida.

Finally, the Bill addresses the multiple existing programs for protection of the South Florida natural environment, some quite outdated, to clarify who's on first and what's on second by creating lead agency responsibility for various regulatory programs and identifying Basin Management Action Plans (BMAPs) as the definitive tool for problem solving and regulation to protect/restore impaired waters.

Key Elements

Set forth below is a compilation of the key provisions of the Bill:

Effective Date

- If signed by the governor (and there is every indication that he will), the law will take effect July 1, 2016.

Springs Protection and Minimum Flows and Minimum Water Levels for Florida Waters

- A new protected class of waters is created: the Outstanding Florida Spring (OFS). OFSs include all historic first magnitude springs and their associated spring runs and the following: De Leon, Peacock, Poe, Rock, Wekiwa

and Gemini Springs, and their spring runs. If a minimum flow or minimum water level (MFL) has not been adopted for an OFS by July 2017 (2026 in Northwest Florida), emergency rulemaking will be used to adopt this protection. The MFL is the limit at which further withdrawals would be significantly harmful to the water resources or ecology of the area. Recovery and prevention strategies will also be adopted for any OFS not meeting the adopted MFL. (For those familiar with the import of this nuance: rules adopted for this purpose are not subject to the requirement that rules be ratified by the Legislature if they do not pass the adverse impact/regulatory costs criteria of the Administrative Procedures Act.)

- The Department of Environmental Protection (FDEP) is made responsible for designating priority focus areas (areas where the aquifer is generally most vulnerable to pollutant inputs) for each OFS. Priority focus areas set the stage for prohibitions and protections under the new law.
- Maintaining or restoring MFLs is a concern for all waters, not just the OFSs. In fact, the Bill provides that whenever an MFL is adopted or revised for any water body that falls below or is projected to fall below the MFL within 20 years, a recovery and prevention strategy (development of alternative water supplies or other actions) will have to be developed simultaneously.
- By July 1, 2016, FDEP must begin assessment of every OFS for which an impairment determination has not yet been made under existing law. Concurrent with adoption of a total maximum daily (pollutant) load (TMDL) for the OFS, a BMAP shall be developed with a nutrient TMDL. (A TMDL is the load that a water body can assimilate without violation of water quality standards.) Where nitrogen pollution from onsite sewage treatment and disposal systems constitutes at least 20% of the nonpoint source nitrogen pollution or where remediation is necessary to achieve the TMDL, the BMAPs will include onsite sewage treatment and disposal system remediation plans. Local governments will be required to adopt a model fertilizer use ordinance unless one is already in place.
- OFS BMAPs must include identification of each point source (discrete conveyance such as a pipe) or category of nonpoint sources (such as stormwater), including urban and sports turf and agricultural fertilizers, onsite sewage treatment and disposal systems (such as septic tanks), sewage treatment plants, animal wastes and stormwater facilities. An estimated allocation of pollutant load must be provided for each point source or category of nonpoint sources with target dates for achieving the TMDL. While this may sound like everyone will have a right to continue to pollute as previously authorized, there is no guarantee that the allocation will not result in a reduction of allowed discharge. In fact, the latter is most likely the case where an OFS is presently impaired by nutrient pollution. It is recognized in the Bill that onsite sewage treatment systems may need to be corrected or connected to central sewage systems in priority focus areas. Subject to available funding, the cost may be provided.
- Activities prohibited within a priority focus area are: New domestic wastewater facilities with permitted capacities above 100,000 gallons per day (unless they meet advanced waste treatment standards); new onsite sewage treatment and disposal systems on lots of less than 1 acre, if in conflict with a remediation plan; new hazardous waste facilities; land application of domestic wastewater biosolids not in accordance with an FDEP approved plan; new agriculture operations that do not implement best management practices (BMPs) or other necessary measures.

Pilot Water Projects

- Development of alternative water supplies for water-starved areas is encouraged through provision for pilot projects to be undertaken by the three largest water management districts: St. Johns, South Florida (SFWMD) and Southwest Florida. However, the Districts are precluded from distributing or selling water to the project participants. This assures those presently in the business of distributing or selling water that the districts will not become their competitors and encourages a partnering of those users and self-suppliers with the districts in these projects.

Central Florida Water Initiative

- The ongoing collaborative work of stakeholders and regulating agencies known as the Central Florida Water Initiative (CFWI) is recognized and affirmed. The CFWI is directed to adopt a single, multidistrict regional water supply plan, including needed recovery or prevention strategies and a list of water supply development or resource projects; provide a single hydrologic planning model; and develop uniform rules (that define harm, provide a consistent process for permit review, establish conservation goals for consumptive use permits and provide conservation goals consistent with the regional water supply plan, including a goal for residential per capita water use for each consumptive use permit). Rulemaking must be initiated by the end of this year. However, as an aside, much work has already been done in these topic areas, including adoption of the regional water supply plan, and activity will continue to surge forward in the coming months.

Regulation of Water Supply

- Any new consumptive use permit or renewal that authorizes withdrawals of 100,000 gallons or more per day from a well with a diameter of 8 or more inches will be monitored for water usage.
- Preferred water supply sources may be identified for users for whom access to new water supplies is not technically or financially feasible.
- It is not inconceivable that existing permits will be reassessed in the future for "over-allocation." In such case, the legislation states that no allocation will be modified where water use was reduced due to implementation of water conservation measures. Specific examples are provided for agricultural uses.
- Water farming (water storage or water recharge for pay) is encouraged by affording priority consideration to public-private partnerships that store or treat water on private lands to improve water quality and assist with water supply or minimize nutrient loads and maximize conservation. Water farming became a useful tool when it was recognized that Florida discharges much of its freshwater to the ocean. This tool became particularly important as waters from the Kissimmee River and Lake Okeechobee were discharged to the ocean through the St. Lucie Estuary and concerns were raised that these discharges could cause imbalances to salinity of estuarine waters.

South Florida Environmental Programs

- Various existing environmental programs are brought under the umbrella of the Lake Okeechobee Watershed Protection Program and the Lake Okeechobee BMAP is identified as the program element designed to achieve the TMDL for the Lake. The Lake Okeechobee Basin encompasses not just the areas around the lake but travels up the Kissimmee River as well. The legislation requires development of milestones toward achieving the TMDL for the lake. Because the Bill identifies the BMAP as the means of achieving reductions in nutrient pollution, it requires SFWMD to amend the outdated Chapter 40E-61, F. A. C., to make it consistent with the Water Bill. The Rule will now provide for a monitoring program for those who opt to show compliance through monitoring instead of implementation of BMPs.
- Lead agencies are designated as follows for the implementation of the Lake Okeechobee programs: SFWMD – hydrologic improvements; Department of Agriculture and Consumer Services – agricultural practices; and FDEP – water quality protection.
- In addition to regional projects, much of the implementation of the BMAP will come from implementation of BMPs, both for agricultural and non-agricultural sources of stormwater runoff. Rulemaking can be expected for the adoption of non-agricultural, non-point source BMPs, as there has already been rulemaking to adopt agricultural BMPs. The legislation provides that where water quality problems are detected for nonagricultural nonpoint sources despite the appropriate implementation of adopted BMPs, FDEP and the District shall institute a reevaluation of practices and the rules will be revised to require implementation of the modified practices within a reasonable time period. Might this involve retrofitting of existing urban stormwater systems? Stay tuned.

- Programs similar to the Lake Okeechobee plans are provided for the Caloosahatchee River Watershed and the St. Lucie River Watershed. Existing programs are realigned to make them consistent with their corresponding BMAPs.
- In a tidbit for the regulated community, the existing doubling up of permitting for the outfalls structures around Lake Okeechobee was dropped by FDEP. SFWMD will continue to obtain a permit from FDEP for its own outfalls.

Enforcement

Provision for enforcement and verification of BMAPs and management strategies was provided in a new section providing that BMAPs are enforceable pursuant to DEP's currently existing suite of enforcement options from warning notices to criminal fines.

Other BMAP Changes

- Each new or revised BMAP in the state will now include appropriate management strategies available through existing water quality protection programs to achieve the TMDL, which may provide for phased implementation; a description of BMPs adopted by rule; a list of projects in priority ranking with cost estimates and completion dates; the source and amount of financial assistance; and the estimated load reduction from each project.

Additional Items of Interest

- A database of conservation lands suitable for public access and recreation will be made available electronically to the public.
- Self-suppliers (those who produce their own water) will join local governments, government-owned and privately owned utilities as entities qualifying for technical assistance with water resource development.
- The water management district annual reports to the legislature will include specifics about water quality and water quantity projects intended to implement BMAPs with priority rankings, cost, source, benefit and level of impairment of the water body involved.
- Water management districts are directed to promote expanded cost-share criteria for additional conservation practices, such as soil and moisture sensors and other irrigation improvements, water-saving equipment, water-saving household fixtures and software technologies that can achieve verifiable water conservation.
- FDEP must adopt a water quality classification to protect surface waters used for treated potable water supply. The criteria will be the same as those presently in use for Class III waters.
- FDEP must establish standards for the collection and analysis of water quantity, water quality and related data.

Akerman has assembled a team of lawyers and public policy professionals, experienced in regulatory and environmental matters, to meet the increasing water resource challenges facing our clients.

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Suggested changes to the FDEP Interim Guidance Memorandum within the CFWI Area after adoption of the RWSP

PREPARED BY: Al Aikens

DATE: March 15, 2016

Purpose and Summary

On December 12, 2013, FDEP issued “Guidance Memo re: Interim Consumptive Use Permitting (CUP) within the Central Florida Water Initiative (CFWI) Area” (Guidance Memo). The Guidance Memo presented guidance for groundwater withdrawal CUPs to be implemented within the CFWI Area during the interim period from its issuance until the CFWI Regional Water Supply Plan (RWSP) was prepared. The Guidance Memo did not affect the typical CUP application requirements for the demonstrations of need, use in the public interest, and the lack of unacceptable impacts to the water resource and existing legal users, regardless of water supply source.

Now that CFWI is moving to a different phase, it is important to determine what should be the status of the Guidance Memo, since the interim period has passed and the Reg Team is reviewing proposals for rule amendments. At minimum, the Guidance Memo should be revised and updated. This memorandum reviews the status of the four topics listed in the Guidance Memo and makes specific recommendations as to revisions to the Guidance Memo. Some of these revisions may be best carried forward through rule amendment; others may be appropriate for a new Guidance Memo.

Introduction

The Guidance Memo is specific to groundwater withdrawals, the effects of the groundwater withdrawals, and maintaining the sustainable limit of groundwater withdrawals by coordination as to permit applications among the WMDs, consideration of permit duration during permit application review, promotion of water conservation, and provision of uniform text for staff reports and select limiting conditions for groundwater withdrawal CUPs.

Since the issuance of the Guidance Memo, draft and final versions of the RWSP have been prepared and reviewed by the CFWI technical teams, CFWI Technical Oversight Committee, CFWI Management Oversight Committee, the WMDs, and the public. The final RWSP and its companion document, *2035 Water Resources Protection and Water Supply Strategies Plan*, December 2015, were presented to and approved by the CFWI Steering Committee and the Governing Boards of the three water management districts (WMDs) between October 2015 and December 2015.

Presented below is an assessment of the applicability of the four topics that were the subjects of the Guidance Memo to groundwater withdrawal CUPs within the CFWI Area, to be considered in updating the Guidance Memo.

Topic 1 – Coordination on Pending Permit Applications

The coordination of pending CUP applications among the three WMDs applies to all applications and anticipated applications for permit renewals. In the larger context this continued coordination assists

permitting consistency among the WMDs and provides a formal mechanism to keep the public informed. This coordinating effort should be continued.

RECOMMENDATION: The Coordination of Pending Permit Applications by the three WMDs should include maintaining a cumulative total of pending and approved permitted withdrawals and the net increase in pending and approved permitted withdrawals beginning January 2014, covered by the Guidance Memo.

Topic 2 – Permit Duration

This topic described maximum CUP durations established by Florida Statutes and the ability to issue shorter duration permits based on a case-by-case analysis during permit application review. This guidance is nearly identical to the practice prior to issuance of the Guidance Memo.

RECOMMENDATION: Permit durations should be 20 years or less as determined on a case-by-case basis.

Topic 3 – Water Conservation

This topic described the importance of water conservation and directed the three WMDs to develop additional water conservation options, to work with a selected number of large utility customers to assess water use practices and opportunities for more efficient water use, and to annually perform random citizen surveys to determine awareness of water supply issues and the need for water conservation and report the progress of these activities to FDEP by June 2014. Continued emphasis on water conservation benefits the environment, and residents and visitors of the CFWI Area. Continued conservation efforts also assist in prolonging permitted traditional water supplies. A proposed permit condition was suggested as follows:

“The Central Florida Water Initiative documented existing water resource environmental impacts within its boundaries. This Initiative remains underway and is, in part, crafting long-term water supply solutions for the region. As a component of immediate, interim measures the permittee is encouraged to participate in the District’s on-going, heightened water conservation public education program. Given the permittee’s use class, opportunities may include such activities as participation in water conservation public service announcements, demonstrations of irrigation efficiency at community gardens, posting water conservation information or links on the permittee’s website. Please contact (INSERT contact information) to discuss opportunities for participation in this important District effort.”

RECOMMENDATION: This condition should continue to be added to all CUPs covered by the Guidance Memo.

Topic 4 – Permit Application Documentation and Permit Conditions

In addition to the condition listed above, this topic presented guidance on other language to be included in the staff reports and permit limiting conditions during the interim period. This language presented in the Guidance Memo was to apply to new permits and permit modifications with increases in allocation or duration, except permit duration extensions associated with conservation. However, WMDs have applied this condition to permits that do not meet these criteria such as permit renewals for water sources other than groundwater and permit modifications which did not increase allocation or duration.

The context of the guidance language is that if permitted groundwater withdrawals unacceptably impact the hydrology or ecology of surface water bodies or spring flows, the permit may be modified. The language (Topic 4 Condition) reads as follows:

“This project is located in the Central Florida Water Initiative (CFWI) area, an area with on-going impacts to water resources which are being addressed by the CFWI. If the District determines that adverse impacts to water resources or existing legal users are occurring or are projected to

occur because of the Permittee's authorized withdrawals over the permit duration, the District, upon reasonable notice to the permittee and including a statement of facts upon which the District based its determination, may modify quantities permitted or other conditions of the permit, as appropriate, to address the impact, but only after an opportunity for the permittee to resolve or mitigate the impact or to request a hearing. Such modification, if any, will consider such factors as the permittee's relative contribution to the water resource impact being addressed due to groundwater withdrawals, the timing of this permit issuance compared to presently existing legal use of water, and other considerations identified by the CFWI Solutions Planning and Regulatory Teams. Modifications may include mitigation of impacts and / or reconsideration of allocations or requirements to timely implement required actions that are consistent with the long-term, regional water supply solutions as implemented by rules. Such actions may include the development of alternative water supplies, the implementation of water resource and / or water supply development projects, the application of impact offsets or substitution credits, operating plans, heightened water conservation or other appropriate actions."

Given the potential adverse impact of the imposition of such text in a permit for a project that should be incentivized because it furthers the goals of CFWI, including the creation of unwarranted adverse bonding considerations for public utilities, it is important to evaluate the types of permits to which the Topic 4 Condition should be appropriately added.

The WMDs have been implementing the Guidance Memo by adding the Topic 4 Condition to all CUPs without discriminating as to the type (water source and use class) of CUP involved. It is appropriate also as part of this exercise to review this practice and determine which existing permits should be modified by Administrative Order to remove the Topic 4 Condition.

The Topic 4 Condition is relevant for groundwater withdrawal CUPs for all use classes. By definition, the Topic 4 Condition is not relevant for CUPs for traditional surface water and alternative water supplies (AWS) for all use classes because impacts caused by these withdrawals are not associated with impacts from withdrawals of groundwater.

Environmental protection of the hydrology and ecology of surface water bodies and spring flows from surface water withdrawals and AWS withdrawals remains in effect through the existing permitting criteria and impact analyses performed through CUP application and review processes that are unaffected by the Guidance Memo.

Existing CUPs that implement AWS¹ to which the Topic 4 Condition has been imposed should be the subject of administrative orders to delete the condition.

RECOMMENDATION: The Guidance Memo should be amended to instruct the WMDs to apply the Topic 4 Condition only to new groundwater withdrawal CUPs and groundwater withdrawal permit modifications with increases in allocation or duration, except permit duration extensions associated with conservation. This should apply for all use classes. The Guidance Memo should be amended to clarify that the WMDs should not apply the Topic 4 Condition to: traditional surface water and AWS withdrawal CUPs for all use classes; and, to other groundwater withdrawal permit modifications that do not result in increases in allocation or duration. The Guidance Memo should also instruct the WMDs, by administrative order, to rescind the condition from previously-issued permits that do not meet this description.

¹ Alternative water supplies defined in the CFWI RWSP and in Section 373.019(1), F.A.C. - "Alternative water supplies" means salt water; brackish surface and groundwater; surface water captured predominately during wet-weather flows; sources made available through the addition of new storage capacity for surface or groundwater, water that has been reclaimed after one or more public supply, municipal, industrial, commercial, or agricultural uses; the downstream augmentation of water bodies with reclaimed water; stormwater; and any other water supply source that is designated as nontraditional for a water supply planning region in the applicable regional water supply plan.