

Chapter 3: 2011 Priority Water Bodies List and Schedule

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INTRODUCTION

In addition to the water resource protection criteria contained in the Basis of Review for Water Use (SFWMD, 2010), the South Florida Water Management District (SFWMD or District) uses three additional mechanisms to protect water supplies for natural systems from consumptive uses: (1) Minimum Flows and Levels (MFLs), (2) Water Reservations, and (3) Restricted Allocation Area rules. This chapter provides a summary of current rules in effect during 2010 and the priorities and schedule for developing new rules planned for 2011 through 2015. In recent years, the SFWMD's priorities have focused on establishing Water Reservation and Restricted Allocation Area rules to facilitate the Comprehensive Everglades Restoration Plan (CERP) and construction of CERP project components. Federal law requires natural system water provided by CERP projects to be protected by Water Reservation or Restricted Allocation Area rules prior to executing a cost-share agreement to construct.

Section 373.042(2), Florida Statutes (F.S.), requires each of the five water management districts to provide the Florida Department of Environmental Protection (FDEP) an annual Minimum Flow and Level (MFL) priority list and schedule. The SFWMD provides two lists to the FDEP. The first list identifies the specific water bodies where MFL rules will be established or updated, and the second list specifies those water bodies where Water Reservations and Restricted Allocation Area rules will be developed for the purpose of protecting natural system water from future consumptive use allocations. Both priority lists include a schedule with the name of each water body and the year in which the MFL, Water Reservation, or Restricted Allocation Area rule will be considered for adoption by the Governing Board.

MFL criteria provide a basis for defining the point at which additional withdrawals will result in significant harm to water resources or the ecology of an area. Protection of non-consumptive uses may be also considered and provided for when establishing MFLs (Section 373.042, F.S.). A baseline condition for the protected resource functions must be identified through consideration of changes and structural alterations in the hydrologic system [Section 373.042(1), F.S.]. If it is determined that water flows or levels are presently below the relevant MFL, or will fall below an established MFL within the next 20 years, then the District must develop and implement a recovery or prevention strategy [Section 373.042(2), F.S.]. MFL recovery or prevention strategies are presented in the regional water supply plans for the District's four planning areas, and MFL and Water Reservation activities are also discussed in Chapter 5A of this volume.

To date, MFL criteria have been adopted for 13 water bodies within the SFWMD including nine water bodies in 2001, two in 2002, and two in 2006. These water bodies include Lake Okeechobee, five areas within the Everglades (Water Conservation Areas 1, 2, and 3, Everglades National Park, and the Rotenberger and Holey Land Wildlife Management Areas¹), the northern portion of the Biscayne aquifer, the Lower West Coast aquifer system encompassing three semi-confined aquifers, the Caloosahatchee River and Estuary, the St. Lucie River and Estuary, the Northwest Fork of the Loxahatchee River and Estuary, Lake Istokpoga, and Florida Bay (**Figure 3-1**).

¹ In this year's report, five areas within the Everglades (instead of four) are reflected, as the Rotenberger and Holey Land Wildlife Management Areas are distinguished separately from the Water Conservation Areas in this region.

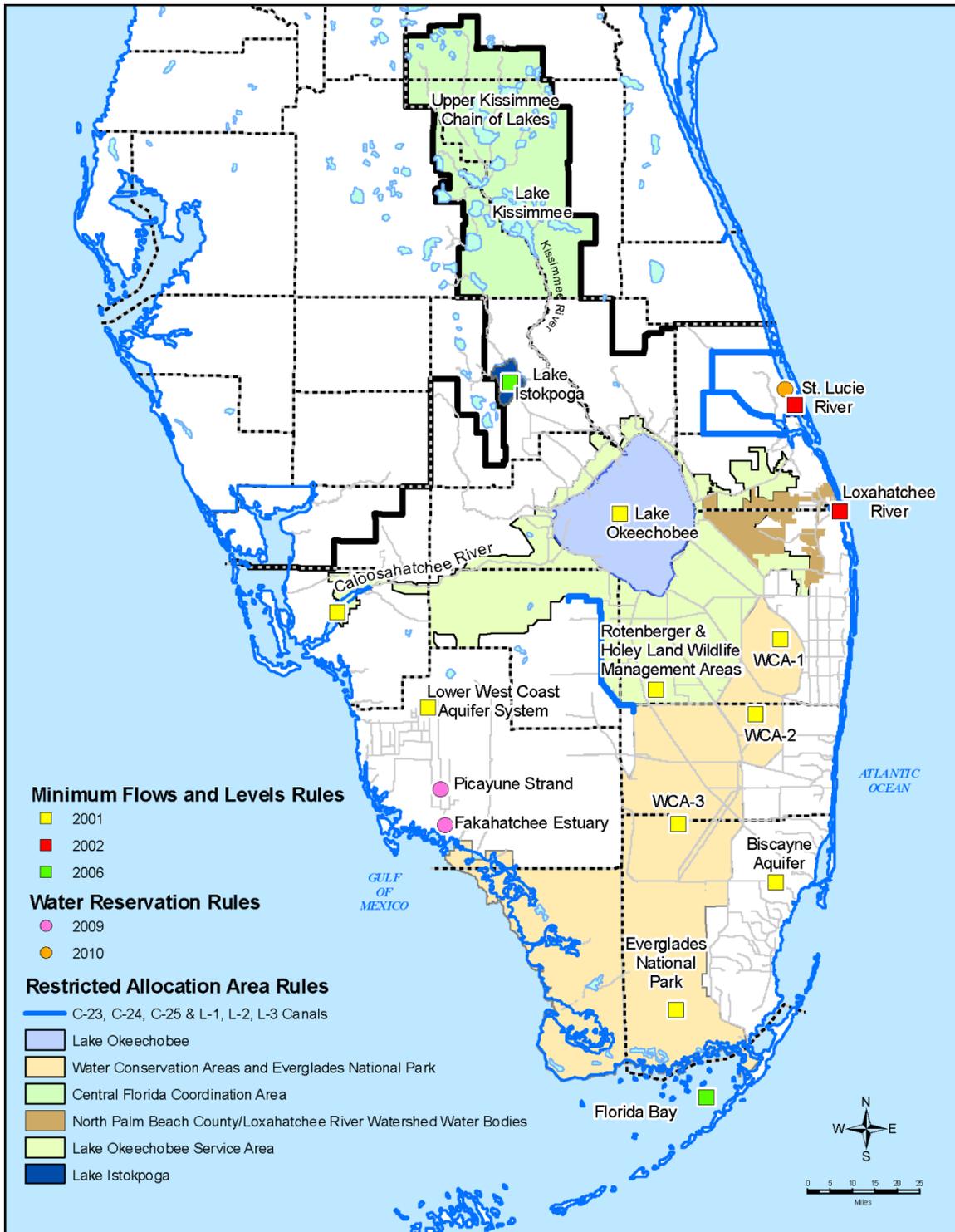


Figure 3-1. Water bodies where Minimum Flows and Levels, Water Reservations, or Restricted Allocation Area rules have been adopted.

Under Section 373.223(4), F.S., District has the authority to “...reserve from use by permit applicants water, in such locations and quantities and for such seasons of the year, as may be required for protection of fish and wildlife or the public health and safety.” Whereas MFL criteria are used to prevent significant harm from occurring to water resources, Water Reservations provide a different standard, which is to protect fish and wildlife resources.

The District is developing Water Reservation rules based on the evaluation of existing water availability and consideration of future water that may be made available by CERP and other restoration projects. The District is required to use its reservation or allocation authority to protect water for the natural system identified by CERP projects prior to executing an agreement to construct these projects with the U.S. Army Corps of Engineers (USACE), consistent with Subsection 373.470 (3)(c), F.S. The District’s first Water Reservation rule was adopted for the Picayune Strand and Fakahatchee Estuary in 2009; the second Water Reservation rule was adopted for the North Fork of the St. Lucie River in support of the CERP Indian River Lagoon – South Project. Water Reservation rules are anticipated to be ready for Governing Board consideration in 2012 for the Caloosahatchee Estuary, in support of the CERP Caloosahatchee River (C-43) West Basin Storage Reservoir Project, and the Kissimmee River and Kissimmee Chain of Lakes, in support of the Kissimmee River Restoration Project.

The District also applies a third type of regulatory mechanism, known collectively as Restricted Allocation Area rules, for protecting natural systems from consumptive uses. These rules are defined in Section 373.223(1), F.S., which specifies the three-prong test used for issuing Consumptive Use Permits. The Restricted Allocation Area rules can be found in Section 3.2.1 of the Basis of Review for Water Use (SFWMD, 2010). One of these rules is the Regional Water Availability rule, which was adopted by the District’s Governing Board in 2007. This rule limits the allocation of water from the Everglades and the Loxahatchee River Watershed (**Figure 3-1**). Another Restricted Allocation Area rule applies to the Lake Okeechobee Service Area, adopted in 2008, limits withdrawals from Lake Okeechobee and the C-43 and C-44 canals, Caloosahatchee and St. Lucie canals, respectively (**Figure 3-1**), by establishing a baseline of permitted water use. Water bodies covered by these Restricted Allocation Area rules include:

Loxahatchee River Watershed

- Northwest Fork of the Loxahatchee River
- Kitching Creek
- Cypress Creek
- Hobe Grove Ditch
- Moonshine Creek
- Jonathon Dickinson State Park
- DuPuis Reserve
- J.W. Corbett Wildlife Management Area
- Pal Mar
- Loxahatchee Slough (C-14, C-18, C-18W, and C-18E canals)
- Grassy Waters Preserve
- Riverbend Park
- L-8 Reservoir
- L-8 Canal (from C-51 to L-8 Tieback Canal)
- M Canal
- L-8 Tieback Canal

Everglades

- Water Conservation Area 1 (Arthur R. Marshall Loxahatchee National Wildlife Refuge)
- Water Conservation Areas 2A and 2B
- Water Conservation Areas 3A and 3B
- Everglades National Park
- Holey Land Wildlife Management Area
- Rotenberger Wildlife Management Area

Lake Okeechobee

- Lake Okeechobee
- Integrated conveyance systems hydraulically connected to the Caloosahatchee River, the St. Lucie Canal, or secondary canal systems that receive water from Lake Okeechobee

Further details on MFLs, Water Reservations, and Restricted Allocation Area rules are available on the District's website at www.sfwmd.gov/reservations. Related rule development and peer-review activities are presented on the District's website at <http://sfwmd.websitetoolbox.com/?forum=174677>. Information on Restricted Allocation Area rules is detailed in Section 3.2.1 of the Basis of Review for Water Use (SFWMD, 2010).

RULE DEVELOPMENT PROCEDURES

Rulemaking is conducted consistent with the procedures in Chapter 120.54, F.S. However, due to the nature of these rules potentially affecting consumptive uses, Water Reservations and MFL rules rely upon developing technical information to support the rule, which documented in a technical report and then peer-reviewed by an independent scientific panel. The four major steps of the rule development process are:

- **Step 1.** Compile into a report the relevant science linking water resource functions that are to be protected by regulation and the water needs associated with those functions.
- **Step 2.** Conduct scientific peer review of available information to determine if linkage between water resource functions and water necessary to protect those functions is scientifically sound. If review concludes that data are insufficient, then research further and repeat peer-review process until sufficient data and information are achieved.
- **Step 3.** Submission of a rulemaking request to the Office of Fiscal Accountability and Regulatory Reform for approval to initiate the rule development process. Once approved, the rulemaking steps include drafting the rules, drafting the Statement of Estimated Regulatory Costs, decision making by the District's Governing Board to enter rulemaking, and holding a public hearing to consider adoption of the final rule. The District engages the public and other stakeholders through workshops, dedicated web pages, notifications to interested parties, and updates at Governing Board and Water Resource Advisory Commission meetings for additional input throughout the steps.
- **Step 4.** Upon completion of the rulemaking process, if the Statement of Estimated Regulatory Costs prepared for the rule demonstrates that it will have an adverse impact on small businesses or is likely to affect economic growth, employment, private sector investment, business competitiveness, productivity, innovation, and regulatory costs in excess of certain monetary thresholds, then the rule must be ratified by the Florida legislature in order to become effective.

2010 ACCOMPLISHMENTS

In 2010, the District adopted its second Water Reservation rule to set aside water for the North Fork of the St. Lucie River in support of the CERP Indian River Lagoon – South Project. Water Reservation rule development for the Caloosahatchee Estuary, in support of the CERP Caloosahatchee River (C-43) West Basin Storage Reservoir Project, and the Kissimmee River and Kissimmee Chain of Lakes, in support of the Kissimmee River Restoration Project, continued throughout 2010. To support the CERP Biscayne Bay Coastal Wetlands Project, the first step was accomplished when the Governing Board initiated rule development for a Restricted Allocation Area rule for Biscayne Bay in 2010. In addition, the District successfully demonstrated to the USACE that one of the existing Restricted Allocation Area rules protects the natural system water in the Everglades provided by the CERP Site 1 Impoundment (Fran Reich Preserve) Project, which enabled a Project Partnership Agreement to be executed and construction to start.

2011 PRIORITY LIST

Over the past five years, the SFWMD's priorities have focused on establishing Water Reservation and Restricted Allocation Area rules to protect the existing water in the regional system from future allocation needed for restoration. This includes CERP and other restoration projects. Federal law mandates Water Reservation and Restricted Allocation Area rulemaking to protect the water provided by CERP projects prior to executing a 50-50 cost-share agreement with the federal government. Therefore, planned activities in 2011 include continuing progress on the reservation rules for the Caloosahatchee Estuary and the Kissimmee River and Kissimmee Chain of Lakes, developing a Restricted Allocation Area rule for Biscayne Bay and recommending use of the existing Restricted Allocation Area rules to demonstrate that the water provided by the C-111 Spreader Canal Western and Broward County Water Preserve Areas projects is protected.

Despite the extent of the District's existing and planned rules, some water bodies are not currently protected by one of these specific rules. In 2011, investigations are planned to begin for Estero Bay to determine if additional rulemaking would be appropriate. Additionally, updating the existing MFL criteria for the Caloosahatchee Estuary (one of the first MFLs established) is scheduled to begin, and the technical evaluation of the Florida Bay MFL criteria is expected to conclude. Completion of these tasks is dependent on their prioritization among other projects to be funded over the next five years.

Specifically, the District's priorities outlined in the 2011 lists are as follows:

1. Complete rule development for the Kissimmee River and Kissimmee Chain of Lakes Water Reservation in 2012, which includes holding public workshops and submitting draft rules to the Office of Fiscal Accountability and Regulatory Reform. Water bodies within the scope of this rulemaking are:
 - Kissimmee River and its floodplain
 - Lakes Kissimmee, Cypress, and Hatchineha
 - Lake Tohopekaliga
 - East Lake Tohopekaliga, Fell's Cove, Lake Ajay
 - Lakes Hart and Mary Jane
 - Lakes Myrtle, Joel, and Preston
 - Alligator Chain of Lakes (Alligator, Brick, Lizzie, Coon, Center, and Trout)
 - Lake Gentry

2. Complete a draft technical report identifying the water needed for the protection of fish and wildlife and its independent, scientific peer review to support a Water Reservation rule for the Caloosahatchee Estuary in 2011.
3. Initiate a draft Water Reservation rule protecting the water needed for the fish and wildlife in the Caloosahatchee Estuary, which includes holding public workshops once reviewed by the Office of Fiscal Accountability and Regulatory Reform in 2012.
4. Initiate rule development public workshops for Biscayne Bay and draft Restricted Allocation Area rules protecting existing surface water for Biscayne Bay after review by the Office of Fiscal Accountability and Regulatory Reform in 2012.
5. Demonstrate to the USACE that the Restricted Allocation Area rule applicable to the Everglades National Park and Water Conservation Area 2 will protect natural system water provided by the C-111 Spreader Canal Western and Broward County Water Preserve Areas Projects to enable construction of these CERP projects in 2011.
6. Continue data analysis, model development and application, and draft the technical report to review the established Florida Bay MFL criteria. In 2012, after review of the technical report, determine if the existing MFL criteria should be updated.
7. Continue data collection and its analysis, model development and application, and draft the technical report to support updating the Caloosahatchee River MFL rule starting in 2011 through 2015.

On March 10, 2011, the District's Governing Board adopted the 2011 MFL Priority Water Body List and Schedule, which was subsequently submitted to the FDEP for review and approval. Concurrently, a second list containing additional rule development activities that protect natural system water from allocation — specifically Water Reservations and Restricted Allocation Area rules — was presented to the Governing Board and given to the FDEP.

LITERATURE CITED

SFWMD. 2010. Basis of Review for Water Use. South Florida Water Management District, West Palm Beach, FL.