**March 2017 Draft Rule Language**

**SECTION NUMBERS (e.g., CFWI – 2.1) ARE ADDED TO THE BELOW FOR THE BENEFIT OF THIS DRAFT. NUMBERS WILL BE MADE CONSISTENT WITH THE DISTRICTS, IN SO FAR AS THAT IS POSSIBLE, AS WE PROCEED.**

Table of Contents

[CFWI - 1.0 Definitions 2](#_Toc476584484)

[CFWI – 2.0 Harm to the Water Resources of the Area 3](#_Toc476584485)

[CFWI – 2.1. Harmful water quality impacts to the water source resulting from the withdrawal or diversion 3](#_Toc476584486)

[CFWI – 2.2. Harmful water quality impacts from dewatering discharge to receiving waters 3](#_Toc476584487)

[CFWI – 2.3. Harmful saline water intrusion or harmful upconing 3](#_Toc476584488)

[CFWI – 2.4. Harmful hydrologic alterations to natural systems, including wetlands or other surface waters 3](#_Toc476584489)

[CFWI - 3.0 Harm to Existing Offsite Land Uses 9](#_Toc476584490)

[CFWI - 4.0 Environmental Resource and Consumptive Use Permitting Concurrency 10](#_Toc476584491)

# **CFWI - 1.0 Definitions**

The following definitions shall be made applicable to the terms in this CFWI Supplemental Applicant’s Handbook for Consumptive Use Permitting. Where the same term is used in section 1.1 of the SFWMD, SWFWMD, and SJRWMD applicant’s handbooks, section 1.0 below shall supersede the corresponding term in its entirety.

1. “Central Florida Water Initiative Area” or “CFWI Area” is as defined in section 373.0465(2)(a), F.S.

2. “CFWI Supplemental Applicant’s Handbook for Consumptive Use Permitting” means an applicant’s handbook that supplements, and in places supersedes, SFWMD’s, SWFWMD’s, and SJRWMD’s applicant’s handbooks for use within the CFWI Area and which is incorporated by reference and made available at [gateway] and [dep website].

3. Within the CFWI Area, “harmful to the water resources,” as used in section 373.219(1), F.S., means a determination of harm to the water resources following an evaluation of the conditions for issuance of permits set forth in 62-41.301(g)1.-5., as those conditions are evaluated in the CFWI Supplemental Applicant’s Handbook.

4. “Endangered or threatened species” means those animal species that are identified as endangered or threatened by the US Fish and Wildlife Service, the National Marine Fisheries Service, or the Florida Fish and Wildlife Conservation Commission, as well as those plant species identified as endangered or threatened by the US Fish and Wildlife Service or National Marine Fisheries Service, when such plants are located in a wetland or other surface water.

5. “Area of Influence” means:

a. For groundwater systems the area of influence is defined by the cone of depression

b. For surface water systems the area of influence is defined as the extent to which the withdrawal results in a measurable change in surface water levels or flows.

6. “Cone of Depression” means the conical shape taken by the potentiometric surface showing the variation of drawdown with distance due to pumping from a well or wellfield.

# **CFWI – 2.0 Harm to the Water Resources of the Area**

## **CFWI – 2.1. Harmful water quality impacts to the water source resulting from the withdrawal or diversion**

Within the CFWI Area, this section, CFWI – 2.1., shall supersede in its entirety section 3.5 of the SFWMD and SWFWMD handbooks and section 3.3.1.X of the SJRWMD handbook.

This section sets forth the means by which an applicant establishes reasonable assurance with the conditions of issuance set forth in Rule 62-41.301(2)(g)1., F.A.C.

The issuance of a consumptive use permit shall be denied if the withdrawals would cause harmful water quality impacts to the water source resulting from the withdrawal or diversion through: (a) the induced movement of a contamination plume; or (b) the alteration of the rate or direction of the movement of a contamination plume, as evidenced by the predicted influence the water withdrawals would have on inducing movement of the contamination plume or as indicated by a sustained increase in background levels in contaminant concentrations.

## **CFWI – 2.2. Harmful water quality impacts from dewatering discharge to receiving waters**

Within the CFWI Area, this section, CFWI – 2.2, shall supersede in its entirety section 2.3.2.B.2.d.i. of the SFWMD; section 2.4.6. of the SWFWMD handbook; and section 2.3(g)2. of the SJRWMD handbook.

This section sets forth the means by which an applicant establishes reasonable assurance with the conditions of issuance set forth in Rule 62-41.301(2)(g)2., F.A.C.

The use must not cause harmful water quality impacts from dewatering discharge to receiving waters. Applicants who have obtained and are in compliance with a National Pollutant Discharge Elimination System (NPDES) or Environmental Resource Permit for dewatering shall be considered to not cause harmful water quality impacts from dewatering discharge to receiving waters.

## **CFWI – 2.3. Harmful saline water intrusion or harmful upconing**

This section sets forth the means by which an applicant establishes reasonable assurance with the conditions of issuance set forth in Rule 62-41.301(2)(g)3., F.A.C.

Nothing in this section shall be used to determine whether a source qualifies as an alternative water supply. The purpose of this section, including the definitions, is strictly to be used to determine whether saline water intrusion or upconing is harmful to the water resources of the area.

***The concept of harmful saline water intrusion and upconing is under development.***

## **CFWI – 2.4. Harmful hydrologic alterations to natural systems, including wetlands or other surface waters**

Within the CFWI Area, this section, CFWI – 2.4, including all subparts, shall supersede in their entirety sections 3.3. (not including subparts), 3.3.1., 3.3.3, 3.3.4. of the SFWMD applicant’s handbook; sections 3.3 (not including all subparts), 3.3.1.1. (including all subparts), 3.3.1.2, and 3.3.1.3 of the SWFWMD applicant’s handbook.; and section 3.7 of the SJRWMD applicant’s handbook.

This section sets forth the means by which an applicant establishes reasonable assurance with the conditions of issuance set forth in Rule 62-41.301(2)(g)4., F.A.C.

***The topic of mitigation of harm is under development.***

~~To provide reasonable assurances of compliance with the condition of issuance in Rule 62-41.301, F.A.C., an applicant must demonstrate that hydrologic alterations caused by the water use shall not adversely impact the values of wetland and other surface water functions so as to cause harm to the:~~

~~A. Abundance and diversity of fish, wildlife and listed species; and,~~

~~B. Habitat of fish, wildlife, and listed species.~~

~~In reviewing impacts to wetlands and other surface water bodies associated with wetland enhancement, restoration, creation, preservation or other mitigation permitted pursuant to Part IV of Chapter 373, F.S., or other wetland regulatory program implemented by a local, regional, or federal governmental entity, the District shall take into account the functional loss associated with the wetland or other surface water and its role in mitigating other losses.~~

**CFWI – 2.4.1. Delineation And Exclusions Of Wetlands And Other Surface Waters**

**A. Delineation**

For any wetlands and other surface waters within the area of influence of the water withdrawal, the wetlands and other surface waters will be delineated pursuant to Chapter 62-340, F.A.C., as ratified by Section 373.4211, F.S., and are subject to this subsection, except as provided in the exclusions in B, below.

In accordance with Subsection 62-340.300(1), F.A.C., reasonable scientific judgment shall be used to evaluate the existence and extent of a wetland or other surface water, including all reliable information, such as visual site inspection and aerial photo interpretation, in combination with ground truthing. In addition, relevant information submitted pursuant to Chapter 62-340, F.A.C, in support of an ERP/SWM Permit shall be considered. Field delineations of wetlands and other surface waters boundaries shall be required if such boundaries are in dispute.

In determining the location ~~and category~~ of wetlands and other surface waters, the applicant may consult staff reports of previously issued ERP and SWM Permits for the site and adjacent sites, NWI Maps, Land Use/Land Cover maps, NRCS soils maps, formal and informal wetland determinations conducted by the District, and other reliable sources of information. District staff may inspect the site to confirm the location~~, categorization~~ and delineation of wetlands and surface waters, and other site specific information. ~~Site specific topographical data including elevations of hydrologic indicators, wetland boundary and bottom elevations shall be required in the event that the categorization of a wetland or other surface water is in question.~~

**B. Exclusions**

Impacts to the following waterbodies shall not be considered harmful to the water resources of the area.

1. For the purposes of this subparagraph 1. only, “isolated wetland” means any area that is determined to be a wetland in accordance with Chapter 62-340, F.A.C., but that does not have any connection via wetlands or other surface waters as determined using Rule 62-340.600, F.A.C. The District will not consider impacts to isolated wetlands one half (0.5) acre or less in size unless:

a. The wetland is used by endangered or threatened species.

b. The wetland is located in an area of critical state concern designated pursuant to Chapter 380, F.S.;

c. The wetland is connected by standing or flowing surface water at seasonal high water level to one or more wetlands, and the combined wetland acreage so connected is greater than one half (0.5) acre. Wetland connection is determined by the delineation methods for surface waters set forth in Chapter 62-340, F.A.C.

d. The Agency establishes that the wetland to be impacted is, or several such isolated wetlands to be impacted are, cumulatively, of more than minimal value to fish and wildlife.

2. The District will not consider impacts to wetlands or other surface waters which have been authorized to be impacted to the extent established in a construction approval through an ERP or a SWM Permit issued under Part IV of Chapter 373, F.S. or exemption listed or promulgated under Part IV of Chapter 373, F.S. or Chapter 403, F.S.

3. Ponds constructed in uplands and less than one acre in area and drainage ditches that were constructed in uplands, so long as:

a. Such ponds or ditches are not part of a permitted wetland creation, preservation, restoration or enhancement program; and

b. Such ponds or ditches do not provide significant habitat for endangered or threatened species.

However, consideration of such systems shall be subject to all other conditions of permit issuance.

4. The District will not consider impacts to wetlands or other surface waters to the extent they have been specifically authorized to be impacted or mitigated pursuant to a separate consumptive use permit, unless the applicant proposes additional impacts.

**CFWI – 2.4.3. ~~CATEGORIZATION,~~  Performance Standards**

This Section establishes the standards and thresholds for protection of wetlands and other surface waters from harm pursuant to the conditions for permit issuance in Rule 62-41.301, F.A.C. The standards and thresholds specified herein shall apply to all water uses, including applications for the initial use of water and modifications and renewals of consumptive use permits, and authorized water uses, herein referred to as the "water use". In its evaluation of the applicant’s water use, the extent of hydrologic alterations caused by the applicant’s water use shall be considered, except as otherwise provided herein.

Districts shall not consider impacts to wetlands and other surface waters not caused by the water use, including, but not limited to, impacts caused by existing surface water management activities, drainage, water table lowering, roads, levees and adjacent land uses.

Harm to the water resources will be evaluated by comparing the existing natural system to the predicted post withdrawal conditions. Previous physical alterations to environmental features, such as drainage systems or water control structures will be considered.

Areas impacted by activities in violation of an Agency rule, order, or permit adopted or issued pursuant to Chapter 373, F.S., or Part VIII of Chapter 403, F.S. (1984 Supp.) as amended, will be evaluated as if the activity had not occurred.

This subsection shall be applied on a case by case basis to wetlands and other surface waters based on their normal hydrologic characteristics and susceptibility to harm as a result of hydrologic alterations from water use withdrawals.

The analysis for determining harm in accordance with the below shall include an assessment of the projected hydrologic alterations caused by the water withdrawal and a cumulative assessment encompassing surface waters. In circumstances of cumulative contributions to harm, an applicant shall only be required to address its relative contribution of harm to the wetlands and other surface waters.

**CFWI - 2.4.3.1. Wetlands**

The following prohibitions constitute harm to the water resources of the area:

1. Wetland hydroperiods and wet season water levels shall not ~~deviate from their normal range and duration to the extent that~~ cause wetlands plant species composition and community zonation are adversely impacted.

2. Wetland habitat functions for aquatic and wetland dependent animals shall be temporally and spatially maintained, and not adversely impacted as a result of withdrawals. These functions include, but are not limited to, providing cover and refuge; breeding, nesting, denning, and nursery areas; corridors for wildlife movement; food chain support; and natural water storage, natural flow attenuation, and water quality improvement, which enhances fish, wildlife, and listed species utilization.

3. Habitat for endangered or threatened species shall not be altered to the extent that utilization by those species is impaired.

**CFWI - 2.4.3.2. Springs, Streams, Rivers and Estuaries**

The following prohibitions constitute harm to the water resources of the area:

1. Changes in flow rates shall not ~~deviate from the normal rate and range of fluctuation to the extent that~~ cause water quality, vegetation, and animal populations ~~are~~ to be adversely impacted in springs not classified as Outstanding Florida Springs, streams, rivers and estuaries.

2. Changes in flow rates shall not ~~deviate from the normal rate and range of fluctuation to the extent that~~ cause downgradient watercourses to experience changes ~~deviations from their normal rate and range of fluctuation to the extent that~~ to flow rates that cause water quality, vegetation, and animal populations ~~are~~ to be adversely impacted.

3. Harm to springs classified as Outstanding Florida Springs, as defined in section 373.802, F.S. Harm to springs classified as Outstanding Florida Springs shall meet all criteria set forth in Rule 62-41.401 and 62-41.402.

**CFWI - 2.4.3.3. Lakes**

The following prohibitions constitute harm to the water resources of the area:

1. Changes in water levels in lakes shall not ~~deviate from the normal rate and range of fluctuation, to the extent that~~ cause water quality, vegetation, or animal populations ~~are~~ to be adversely impacted; ~~and/or~~

2. Changes in water levels in lakes shall not cause flows to downgradient watercourses to experience changes to flow rates that cause ~~deviations from their normal rate and range of fluctuation to the extent that~~ water quality, vegetation, and animal populations ~~are~~ to be adversely impacted.

Evaluation of Narrative Standards (Site-Specific Considerations)

Site specific information shall be submitted by the applicant, if requested by the District or if otherwise deemed relevant by the applicant, for determining whether the narrative standard has been met. The applicant shall provide site specific information on the local hydrology, geology, actual water use or unique seasonality of water use, including, but not limited to:

1. Site specific hydrologic or geologic features that affect the projected drawdown shall be evaluated, including the existence of clay layers that impede the vertical movement of water under the wetland, preferential flow paths, seepage face wetlands that receive high rates of inflow, or the effects of soil depth and type on moisture retention, to the degree that actual field data support how these factors affect the potential for impacts of the water use on the wetland or other surface water.

2. If the applicant asserts that the actual water use has not caused harm to wetlands or other surface waters, site specific information on the condition of the wetlands or other surface waters in question must be provided in conjunction with pumpage records or other relevant evidence of actual water use to substantiate the assertion. Applicable monitoring data ~~as described in Subsection 3.1.1~~ shall be submitted, if available.

3. Other relevant factors or information in assessing the potential for harm to wetlands and other surface waters, such as the condition, size, depth, uniqueness, location, and fish and wildlife utilization, including listed species, of the wetland or other surface water.

# **CFWI - 3.0 Harm to Existing Offsite Land Uses**

Within the CFWI Area, this section, CFWI - 3.0, shall supersede in its entirety section 3.6 of the SFWMD and SWFWMD handbooks; and section 2.3(f) of the SJRWMD handbook.

This section sets forth the means by which an applicant establishes reasonable assurance with the conditions of issuance set forth in Rule 62-41.301(2)(f), F.A.C.

~~Pursuant to paragraph 62-41.301(2)(f), F.A.C., an applicant must demonstrate that the proposed consumptive use will not cause harm to existing offsite land uses, as defined in this Section.~~ This Section does not establish a property right in water, but prohibits harm from a consumptive use to certain land uses that are dependent upon water being on or under the land surface.

Adverse impacts to existing off-site land uses are exemplified by, but not limited to:

1. Significant reduction in water levels in a surface water body;

2. Damage to agriculture, including damage resulting from reduction in soil moisture resulting from consumptive use; and

3. Adverse flooding.

4. Adverse impacts to recreational uses.

In addition, for consumptives uses of water associated with dewatering, an applicant must demonstrate that the proposed consumptive use will not cause harm to existing offsite land uses as a result of the discharge of water associated with dewatering activities, as defined in this Section.

Whether an existing offsite land use is considered under this Section depends on whether there is a reasonable expectation that water will continue to exist on or under the land surface to support that offsite land use. When determining whether there is a reasonable expectation in the occurrence of water for an existing offsite land use, the District will consider:

1. Only those offsite land uses existing at the time of the application;

2. The historic natural and artificial hydrologic variations on the offsite property;

3. The ~~historic use and~~ design function of the offsite property;

4. The purpose and nature of the water or water source on the offsite property, such as surface water management or water quality treatment; and

5. Hydrologic variations that have occurred or are expected to occur as a result of authorized consumptive use withdrawals.

In order to be considered under this rule, the impact on an existing offsite land use must be the result of a withdrawal associated with a proposed consumptive use. Impacts to land uses can occur as a result of many different activities, such as drainage activities, reduced rainfall, regional trends, and other non-consumptive use related influences. Impacts from these non-consumptive use influences will not be considered or mitigated for under this Section.

The applicant must identify those existing land uses that are potentially impacted by the withdrawal associated with their consumptive use, such as seepage irrigated crops and surface water management systems. The applicant must demonstrate that the resulting change in water levels related to the proposed withdrawal will not cause harm, as described in this section above. Methods for avoiding harm to existing offsite land uses include: reducing the amount of water withdrawn, modifying the method or schedule of withdrawal, mitigating the damages caused, or, in the case of dewatering discharges, taking other actions to avoid increasing the potential for flooding. However, an applicant may accept adverse flooding impacts, for example, on land owned by the applicant or land for which the applicant has demonstrated sufficient legal authority to accept such flooding impacts.

The District shall include as a condition in any applicable permit the requirement that the permittee mitigate harm to existing offsite land uses caused in whole or in part by the permittee's consumptive use. The permit condition shall require the permittee to submit a mitigation plan for approval by the District that identifies actions necessary to mitigate unanticipated harm to existing offsite land uses. Such actions must be sufficient to restore the land use that existed prior to the impact and may require a permit modification if required by Rule 62-41.331, F.A.C. A mitigation plan may include replacement of the impacted individual's equipment, relocation of wells, change in withdrawal source, or other means. The mitigation plan will require a permittee to mitigate immediately or upon the actual occurrence of harm.

# **CFWI - 4.0 Environmental Resource and Consumptive Use Permitting Concurrency**

Within the CFWI Area, this section, CFWI - 4.0, shall supersede in its entirety section 1.4.6 of the SFWMD Applicant’s handbook; section 1.3.5 and Rule 40D-2.301(3), F.A.C., of the SWFWMD Applicant’s handbook; and shall act as a new section in SJRWMD.

If an individual CUP application includes either of the following two requests for a consumptive use of water, then the CUP application shall not be considered complete until the applicant has submitted a complete application for an individual or general environmental resource permit (ERP):

1. Requests to irrigate golf course areas, cemeteries, nursery plants, agriculture crops, or landscaped areas, which are a part of an artificially-created surface water management system that requires an individual or general ERP; or

2. Requests to dewater for a project that requires an individual or general ERP under Chapter 373, F.S.

This requirement shall not apply to requests for a consumptive use of water associated with phosphate mining authorized under Chapter 378, F.S., or associated with an ERP project that qualifies for a general permit under Section 403.814(12), F.S.

As long as a CUP application does not meet the conditions for issuance in Rule 62-41.2.301, F.A.C., the requirement for a complete ERP application will be waived.