

# Florida Consumptive Use Permits

How they work, where the water goes  
(and doesn't), and why

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# Big Picture

## Governing Law: Florida Constitution

Section 7, of the Florida Constitution states:

Natural resources and scenic beauty.—

(a) It shall be the policy of the state to conserve and protect its natural resources and scenic beauty. Adequate provision shall be made by law for the abatement of air and water pollution and of excessive and unnecessary noise and for the conservation and protection of natural resources.

- Do we have “adequate provision[s]”?

# Big Picture

## Governing Law: Florida Constitution

Article X, Section 11, of the Florida Constitution states:

The title to lands under navigable waters, within the boundaries of the state, which have not been alienated, including beaches below mean high water lines, is held by the state, by virtue of its sovereignty, **in trust for all the people**. Sale of such lands maybe authorized by law, but only when **in the public interest**. Private use of portions of such lands may be authorized by law, but only when **not contrary to the public interest**.

[Title XXVIII](#)  
NATURAL RESOURCES; CONSERVATION, RECLAMATION,  
AND USE

[Chapter 373](#)  
WATER  
RESOURCES

[View Entire  
Chapter](#)

## CHAPTER 373 WATER RESOURCES

### PART I

STATE WATER RESOURCE PLAN  
(ss. 373.012-373.200)

### PART II

PERMITTING OF CONSUMPTIVE USES OF WATER  
(ss. 373.203-373.250)

### PART III

REGULATION OF WELLS  
(ss. 373.302-373.342)

### PART IV

MANAGEMENT AND STORAGE OF SURFACE WATERS  
(ss. 373.403-373.468)

### PART V

# Governing Law: Florida Statutes 373.016

## Water Resources Chapter (overall water policy)

Declaration of policy.—(1) The waters in the state are among its basic resources. Such waters have not heretofore been conserved or fully controlled so as to realize their full beneficial use.

(2) The department and the governing board shall **take into account cumulative impacts** on water resources and **manage** those resources in a manner to **ensure their sustainability**.

(d) To promote the availability of **sufficient water** for all existing and future **reasonable-beneficial uses** and **natural systems**;

(f) To **minimize degradation of water resources** caused by the **discharge of stormwater**;

(g) To **preserve natural resources, fish, and wildlife**;

(j) Otherwise **to promote the health, safety, and general welfare of the people of this state**.

# Florida Statutes: 373.216- CUPs

## Governing Board implements program w/monitoring

- 373.216 **Implementation of program for regulating the consumptive use of water.**—**The governing board of each water management** district shall, no later than October 31, 1983, implement a **program for the issuance of permits** authorizing the consumptive use of particular quantities of water covering those areas deemed appropriate by the governing board. **Appropriate monitoring efforts shall be a part of any such program** implemented. Notice of any required hearing on the proposed implementation of these regulations shall be published at least once a week for 2 weeks in a newspaper of general circulation in the area to be affected by such regulations, the last notice appearing no less than 10 days prior to the date of the public hearing, in addition to any notice required by chapter 120.

# Florida Statutes 373.219(1)

## Permits Required-

- 373.219 **Permits required.**—(1) The governing board or the department may require such permits for consumptive use of water and **may impose such reasonable conditions as are necessary to assure that such use is consistent with the overall objectives** of the district or department and is **not harmful to the water resources of the area**. However, **no permit shall be required for domestic consumption of water by individual users.**

# Florida Statutes 373.219(3)

## Permits Required-

For Outstanding Florida Springs, the department shall adopt uniform rules for issuing permits **which prevent groundwater withdrawals that are harmful to the water resources** and **adopt by rule** a uniform definition of the term **“harmful to the water resources”** to provide water management districts with **minimum standards necessary** to be consistent with the **overall water policy of the state**. This subsection **does not prohibit** a water management district from adopting a definition that is more protective of the water resources consistent with local or regional conditions and objectives.

- 373.223 Conditions for a permit.—(1) To obtain a permit pursuant to the provisions of this chapter, the applicant must establish that the proposed use of water:
  - (a) Is a reasonable-beneficial use as defined in s. 373.019;
  - (b) Will not interfere with any presently existing legal use of water; and
  - (c) Is consistent with the public interest.
- 373.019(16) “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.

# What does the “public interest” mean?

- “Public Interest” is not defined the Definitions Section – 373.019
- But “Water” Is Define!
  - 373.019(22) “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.

# Also Not Defined: “Existing Legal Use of Water”

- I am told that this means people with a permit or grandfathered in, like the public.
- WMDs do not permit environment uses
- WMDs do not permit aesthetic uses

# Takeaways from Statutes

- Water Management Districts have most of the power along with the Department of Environmental Protection
- The statute appears able to be good or able to be bad via interpretation
- Public Use is open for debate
- Existing legal uses of waters seems to be some kind of back door
- SFWMD has the power to audit and fix this mess!

# How Long are Permits good for?

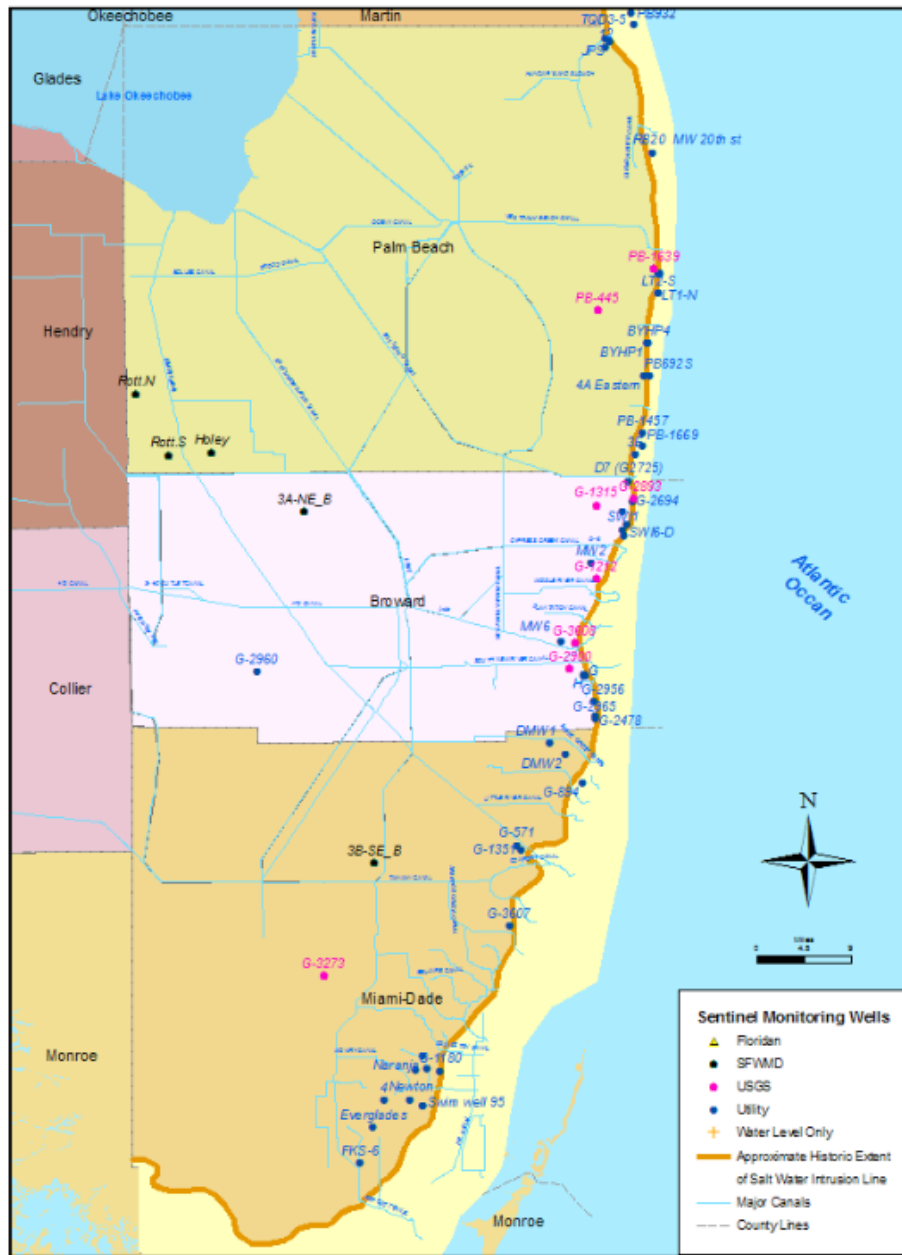
- Up to 20 Years
- 373.236 Duration of permits; compliance reports.—(1) Permits shall be granted for a period of 20 years, if requested for that period of time, if there is sufficient data to provide reasonable assurance that the conditions for permit issuance will be met for the duration of the permit; otherwise, permits may be issued for shorter durations which reflect the period for which such reasonable assurances can be provided. The governing board or the department may base the duration of permits on a reasonable system of classification according to source of supply or type of use, or both.
- (2) The Legislature finds that some agricultural landowners remain unaware of their ability to request a 20-year consumptive use permit under subsection (1) for initial permits or for renewals. **Therefore, the water management districts shall inform agricultural applicants of this option in the application form.**
- History.—s. 7, part II, ch. 72-299; s. 13, ch. 97-160; s. 7, ch. 2005-291; s. 7, ch. 2006-255; s. 10, ch. 2009-243; s. 70, ch. 2010-5; ss. 18, 55, ch. 2010-205; s. 10, ch. 2013-92; s. 1, ch. 2013-169; s. 17, ch. 2015-30; s. 37, ch. 2016-10; s. 15, ch. 2018-158.

# Monitoring

- 6) A new consumptive use permit, or the renewal or modification of a consumptive use permit, that authorizes groundwater withdrawals of 100,000 gallons or more per day from a well with an inside diameter of 8 inches or more **shall be monitored for water usage at intervals using methods determined by the applicable water management district**, and the results of such monitoring shall be reported to the applicable water management district at least annually. The water management districts may adopt rules to implement this subsection. **In lieu of the requirements of this subsection, a water management district may enforce rules that govern water usage monitoring in effect on July 1, 2016**, or may adopt rules that are more stringent than this subsection.
- History.—s. 3, part II, ch. 72-299; s. 10, ch. 73-190; s. 10, ch. 76-243; s. 35, ch. 85-81; s. 4, ch. 98-88; s. 6, ch. 2005-291; s. 15, ch. 2010-205; s. 31, ch. 2015-2; s. 10, ch. 2016-1.

## F.S. 373.227 Water conservation; legislative findings and intent; objectives; comprehensive statewide water conservation program requirements.—

(1) The Legislature recognizes that the proper conservation of water is an important means of achieving the economical and efficient utilization of water necessary, in part, to constitute a reasonable-beneficial use. The overall water conservation goal of the state is to prevent and reduce wasteful, uneconomical, impractical, or unreasonable use of water resources. The Legislature finds that the social, economic, and cultural conditions of the state relating to the use of public water supply vary by service area and that public water supply utilities must have the flexibility to tailor water conservation measures to best suit their individual circumstances. **The Legislature encourages the use of efficient, effective, and affordable water conservation measures.** Where water is provided by a public water supply utility, the Legislature intends that a variety of conservation measures be made available and used to encourage efficient water use. **To achieve these conservation objectives, the state should emphasize goal-based, accountable, tailored, and measurable water conservation programs for public water supply.** For purposes of this section, the term “public water supply utility” includes both publicly owned and privately owned public water supply utilities that sell potable water on a retail basis to end users.



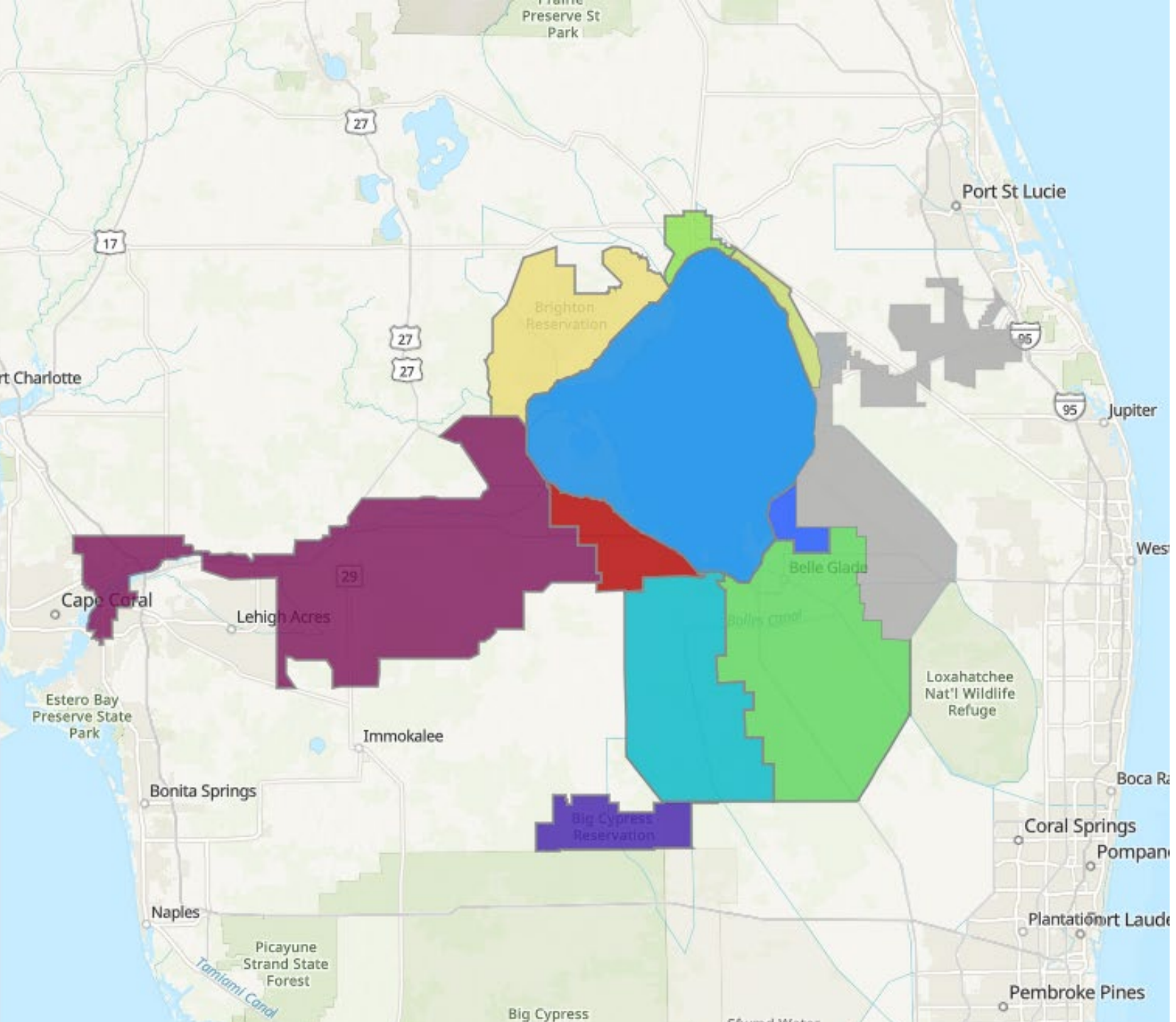
**Sentinel Monitoring Wells in  
Lower East Coast Region**  
(Prepared 6/19/2007)



South Florida Water Management District  
Water Supply Department  
3301 Gull Club Road, West Palm Beach,  
FL 33409  
888-455-0000 • www.sfwmd.gov



- C-21 & S-236 Basins
- Caloosahatchee (C-43)
- Cypress Seminole Indian Reserv
- E. Beach & E. Shore WCD
- Lake Okeechobee
- Miami Canal Basin
- N. New River & Hillsboro
- North Lake Shore
- Northeast Lake Shore
- Northwest Lake Shore
- Other



1. Water usage (pumpage) data is self-reported.

2. N/A in a field could represent:

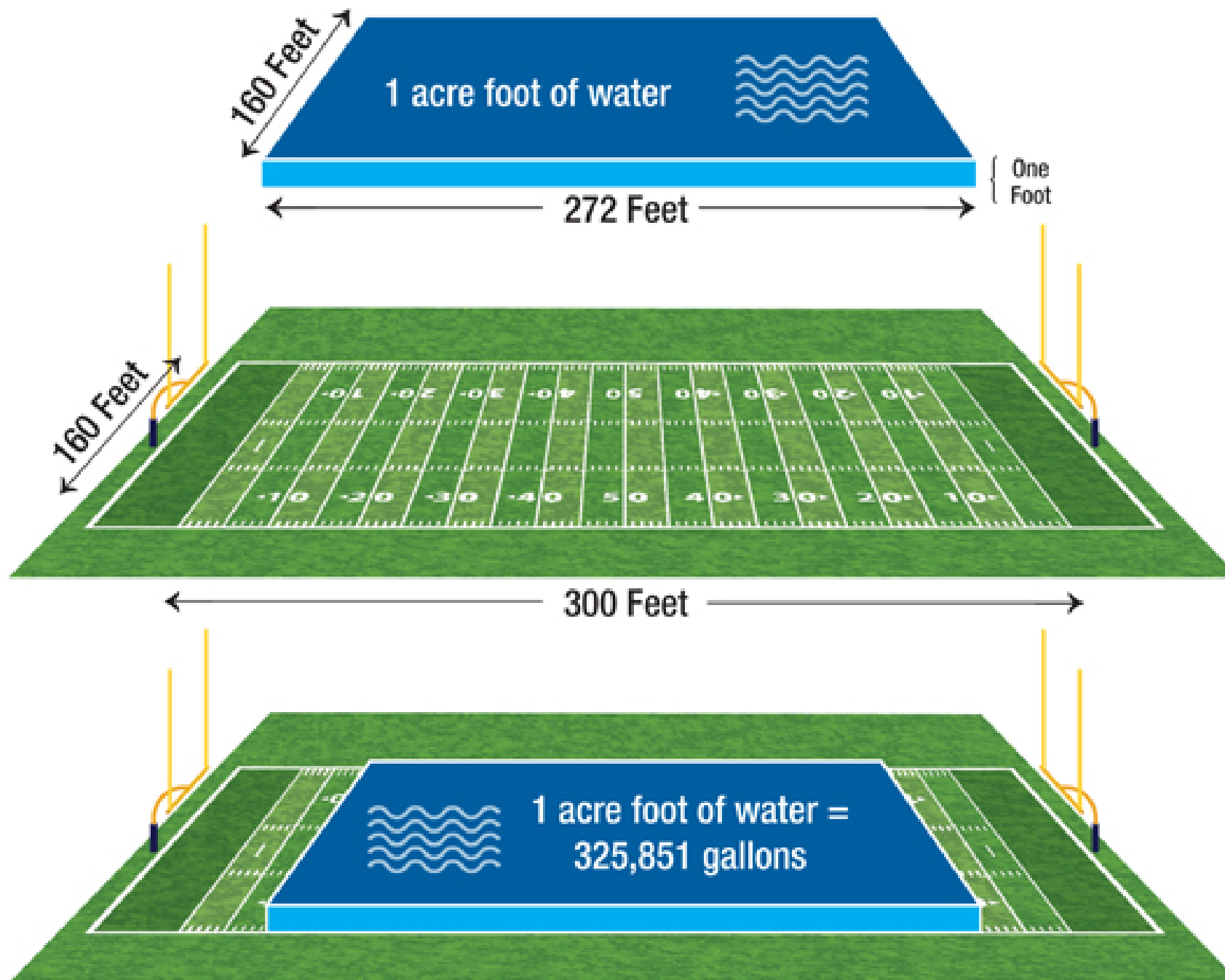
a) water usage reporting is not a requirement of the permit per Applicant's Handbook

b) the project is proposed and reporting is not required until the project becomes active

3. In the context of this listing of data, Primary use (P) is surface water as a primary source;

Secondary use (S) is groundwater as the primary source (not to be confused with secondary user of a Division and Impoundment facility).

PERMIT_N O	PROJECT_NAME	LINK TO PERMIT	LOSA V. LEC	PRIMARY V. SECONDAR	TOTAL ANNUAL ALLO	TOTAL MAX MTH	WATER USEAGE 2017	WATER USEAGE 2016	WATER USEAGE 2015	WATER USEAGE 2014
50-08986-W	SUGAR FARMS CO OP	<a href="#">0226-4 Permit 669870</a>	LOSA	P	63234.96	9737.81	#N/A	#N/A	#N/A	#N/A
26-00176-W	C-3 CANAL GROUP	<a href="#">0226-7 Permit 683642</a>	LOSA	P	56671.80	8168.49	9369.26	3468.05	5766.41	2734.28
26-00003-W	HENDRY-HILLIARD WATER CONTROL DISTRICT	<a href="#">0225-16 Permit 648923</a>	LOSA	P	56521.90	7159.40	10445.50	11103.60	15272.20	10125.30
50-00615-W	CITY OF WEST PALM BEACH PUBLIC UTILITIES	<a href="#">0323-4 Permit</a>	LOSA	P	41818.00	5233.19	10829.29	11451.61	10711.72	9817.38
50-00656-W	OKEELANTA - TENNANT NORTH AND SOUTH	<a href="#">0226-39 Permit 536373</a>	LOSA	P	39154.84	5963.16	#N/A	#N/A	#N/A	#N/A
26-00106-W	DUDA LABELLE FARM	<a href="#">0212-6 Permit 623162</a>	LOSA	P	37210.18	4761.81	9208.37	8578.84	11863.06	8621.25
50-09102-W	US SUGAR CORPORATION - PALM BEACH COUNTY	<a href="#">0211-19 Permit 565202</a>	LOSA	P	30441.71	4470.27	#N/A	#N/A	#N/A	#N/A
26-00139-W	FLAGHOLE DRAINAGE DISTRICT	<a href="#">0225-13 CorrectePermit 60007</a>	LOSA	P	28958.47	3599.91	7520.60	8570.00	3007.00	3397.20
50-00887-W	SOUTH FLORIDA CONSERVANCY DISTRICT	<a href="#">0114-9 Permit 603252</a>	LOSA	P	22066.13	3176.59	996.79	1261.38	#N/A	#N/A
26-00034-W	UNITED STATES SUGAR CORPORATION HENRY	<a href="#">0204-6 Permit 578858</a>	LOSA	P	21537.71	2789.26	3501.90	3679.40	4377.70	4367.20
22-00063-W	DISSTON ISLAND CONSERVANCY DISTRICT	<a href="#">0225-9 Permit 607910</a>	LOSA	P	21482.62	3058.26	8517.00	9408.60	8977.60	8234.30
26-00510-W	PORT LABELLE AGRICULTURE BASINS	<a href="#">0226-5 Permit 712862</a>	LOSA	P	16561.50	2136.32	7238.48	97.14	106.14	134.20
26-00138-W	SUGARLAND DRAINAGE DISTRICT	<a href="#">0226-6 Permit 602993</a>	LOSA	P	16543.45	2120.04	3631.31	3354.29	4628.40	3910.60
26-00082-W	LABELLE PRIVATE DRAINAGE DISTRICT	<a href="#">0227-7 Permit 557915</a>	LOSA	P	15549.66	1842.12	17345.07	11301.64	12896.72	9219.28
36-00003-W	LEE COUNTY UTILITIES	<a href="#">0403-12 StaffReport_PartA</a>	LOSA	S	12508.00	1355.00	6697.82	6480.22	6594.31	5892.76
43-00122-W	CONSOLIDATED LANDS MARTIN COUNTY	<a href="#">0301-10 Permit 20160715</a>	LOSA	P	11766.05	1443.59	7311.34	9398.64	11432.35	11541.42
50-00880-W	BOLLES DRAINAGE DISTRICT	<a href="#">0206-10 Permit 597039</a>	LOSA	P	11575.44	1504.58	#N/A	#N/A	#N/A	#N/A
50-00100-W	SHAWANO WATER CONTROL DISTRICT	<a href="#">0225-6 Permit 578856</a>	LOSA	P	10700.90	1648.61	#N/A	#N/A	#N/A	#N/A
22-00041-W	MOORE HAVEN AGRICULTURAL PROJECT	<a href="#">0217-10 Permit 567519</a>	LOSA	P	10480.82	1298.98	3578.10	3636.71	4118.24	4954.99



# By the Numbers LOSA (restricted area)

- Permits: 236
- Acres: ? (can total)
- Permitted: 860,374,000,000 gallons / 2,640,391 acre feet
- Everglades Agricultural Area: No individual reporting; total in and total out. Told this is an old practice, not clear why, and not because of geologic conditions

# By the Numbers: LOSA, where we have the numbers

- Permitted: 114
- Acres: ? (Can total)
- Permitted: 540,409,000,000 gallons / 1,658,455 acre feet
- Used 2017: 377,191,000,000 gallons / 1,157,556 acre feet
- Used 69.8% of allocation
  
- What happens in a water restriction?
- We do not plan for the environment in droughts as a matter of policy



FORM 60229  
REV. 07/99

**SOUTH FLORIDA WATER MANAGEMENT DISTRICT  
WATER USE PERMIT NO. RE-ISSUE 26-00176-W  
NON-ASSIGNABLE**

**Date Issued:** September 27, 2010

**Expiration Date:** October 31, 2030

**Authorizing:** THE USE OF SURFACE WATER FROM THE SFWMD CANAL (C-43) FOR DIVERSION AND IMPOUNDMENT AND AGRICULTURAL IRRIGATION USE SERVING 31798.19 ACRES WITH AN ANNUAL ALLOCATION OF 56671.8 MILLION GALLONS.

**Located In:** Hendry County,

(SEE FOLLOWING PAGE FOR SECTIONS, TOWNSHIPS  
AND RANGES)

**Issued To:** BARRON WATER CONTROL DISTRICT  
(C-3 CANAL GROUP)  
P O BOX 1606,  
LABELLE, FL 33975

This is to notify you of the District's agency action concerning Permit Application No. 090226-7, dated February 26, 2009. This action is taken pursuant to the provisions of Chapter 373, Part II, Florida Statutes (F.S.), Rule 40E-1.603 and Chapter 40E-2, Florida Administrative Code (F.A.C.). Based on the information provided, District rules have been adhered to and a Water Use Permit is in effect for this project subject to:

1. Not receiving a filed request for an administrative hearing pursuant to Section 120.5 and Section 120.569, or request a judicial review pursuant Section 120.68, Florida Statutes.
2. The attached 25 Limiting Conditions.
3. The attached 10 exhibits.

## LIMITING CONDITIONS

1. This permit shall expire on October 31, 2030.
2. Application for a permit modification may be made at any time.
3. Water use classification:

Diversion and Impoundment into Non-District Facilities.  
Agricultural Irrigation

4. Source classification is:

Surface Water from:  
SFWMD Canal (C-43)

5. Total annual allocation is 56672 MG.

Total maximum monthly allocation is 8168.49 MG.

These allocations represent the amount of water required to meet the water demands as a result of rainfall deficit during a drought with the probability of recurring one year in ten. The Permittee shall not exceed these allocations in hydrologic conditions less than a 1 in 10 year drought event. If the rainfall deficit is more severe than that expected to recur once every ten years, the withdrawals shall not exceed that amount necessary to continue to meet the reasonable-beneficial demands under such conditions, provided no harm to the water resources occur and:

(a) All other conditions of the permit are met; and

(b) The withdrawal is otherwise consistent with applicable declared Water Shortage Orders in effect pursuant to Chapter

# A few examples

- Lee County Utilities: allocated 12,508 million gallons annually
- Public Utility
- Unused water:
  - 2017 – 46.4%
  - 2016 – 48 %
  - 2015 – 47%
  - 2014 – 53%
- Said inflated to account for population increase; issued 2011

# A few examples

- C-3 Canal group: allocated 56,672 million gallons annually
- Agriculture (#1 in LOSA not in EAA)
- Unused water:
  - 2017 – 83.5%
  - 2016 – 93.8%
  - 2015 – 89.8%
  - 2014 – 95.1%

# A few examples

- Hendry-Hillard Water Control District: allocated 56,552 million gallons annually
- Agriculture (#2 in LOSA not in EAA)
- Unused water:
  - 2017 – 81.5%
  - 2016 – 80.3%
  - 2015 – 73%
  - 2014 – 82%

# A few examples

- Duda Labelle Farm: allocated 56,552 million gallons annually
- Agriculture (#3 in LOSA not in EAA)
- Unused water:
  - 2017 – 75%
  - 2016 – 77%
  - 2015 – 68%
  - 2014 – 77%

## SFWMD Total Active Permitted Allocations for Irrigation Use in the LEC and LOSA Areas

Agriculture	859,821.85	MGY
Golf	25,543.90	MGY
Landscape	64,853.42	MGY
Nursery	14,574.22	MGY
<b>Grand Total</b>	<b>964,793.39</b>	<b>MGY</b>

Source: Regulation Division Database

MGY = Million Gallons Per Year

Something Good.

We NEED SFWMD to Review this:

Reservations for Protection of Fish and Wildlife

- (4) The governing board or the department, **by regulation, may reserve from use by permit applicants, water 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 and revision** in the 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.**