

City of Winter Haven Comments on CFWI Proposed Rules

Submitted to: OWP_rulemaking@floridadep.gov, September 23, 2020

Background:

- Winter Haven, known as “Chain of Lakes City”, has 50 lakes within the community and values all aspects of water resources as an integral part of our future.
- Winter Haven is located in a hydrologically impaired region. Impacts have occurred due to lost watershed storage, reduced aquifer recharge, and aquifer pumpage.
 - Currently, recovery plans for this area are considered to lack specificity, including information on quantities of water needed, project locations, and funding sources.
 - Recovery will not only require a limit to pumpage, but also restoration for watershed function. A fully vetted restoration strategy needs to be developed for each problem area prior to requiring local communities to reduce permits.
 - One of the primary implementing mechanisms for regional recovery is to rely on local communities to pursue grant projects, which generally require 50% local funding and the ability to operate and maintain projects in perpetuity. It would be difficult for local communities to fund more expensive water supplies and restoration projects at the same time.
- Winter Haven adopted a Sustainable Water Resource Management Plan in 2010 that indicated that water resource systems, including Winter Haven lakes, are not sustainable unless a different approach is followed. Winter Haven is currently developing a One Water Master Plan to fully implement the 2010 Sustainable Water Resource Management Plan and implement fully sustainable projects.
 - The recommendations included with these comments are intended to suggest a different approach consistent with these plans.
- One of the most iconic results of Winter Haven’s efforts to date is the conceptualization of Sapphire Necklace, which is a connected system of restored wetlands that will provide benefits to water supply, flooding, natural systems and water quality in addition to improving the quality of life for area residents.
 - The Peace Creek Watershed Improvement Project, which is included in the CFWI 2020 RWSP, was based on this effort.
 - The Polk Regional Water Cooperative adopted the Peace Creek Integrated Water Supply Plan which is also based on Winter Haven’s plan.
- Winter Haven has constructed 4 nature parks and approximately 40 LID stormwater projects to date that protect lakes and natural systems, demonstrating a commitment to green infrastructure solutions, long term restoration and the pursuit of multiple benefit projects;

- The proposed rules will cause the need for \$billions in investments in water supplies, with the possibility that additional future funds will be needed to fix unintended resulting impacts.
 - Winter Haven's goal with these comments is to build better communities while committing to permanent solutions to Florida's water resource problems as we grow and develop.

General Comments on CFWI Proposed Rules and Handbook:

- Winter Haven encourages FDEP to look at this rule making effort as an opportunity to 'turn the tides' against further impacts to water resources in Florida and to create permanent, scientifically based, fundable plans to achieve restoration.
- The new rules should prioritize Green Infrastructure projects for meeting future water demands. This is one of the primary mechanisms to ensure that the multiple benefits of water are considered as growth and development occurs.
 - Grant programs should allow projects with multiple benefits to receive additional funding over the 50% allowed by most water resource grant programs.
- The overall intent of the proposed CFWI Rules is to prevent additional harm to the water resources of the region. However, new projects, especially future development, that would use new, more expensive water supplies, even if they follow existing state and local rules, will still cause additional harm to water, including: reduction in aquifer recharge; increase in surface discharge volume out of impaired watersheds; and additional pollutant loading from stormwater runoff;
 - The CFWI Rule should require that any new project in the CFWI, including future development that uses more expensive, alternative water supply sources will not negatively impact water resources.
 - The ERP process is based on the 'presumption' that no impacts will occur, however science has indicated that up to 40% additional impacts can occur, even if the ERP process is followed. It is feasible to expect that investing in new water sources required by this new rule will actually result in less aquifer recharge as new development occurs, requiring even more need for alternative sources and additional restoration in the future.
 - Winter Haven believes that the CFWI Rule should discontinue this practice, especially as it relates to recharging aquifers. It is expected that this new approach will result in new partnerships in the CFWI region so that all beneficiaries of future supplies, including future development, would contribute an incremental share to help restore natural systems.
 - Future development that would use more expensive alternative sources should be required to be water neutral and follow conservation design practices.

- Reclaimed water should be considered as a valuable asset for recovering natural systems and not only as a future water supply. Most reclaimed water originated in the UFA. Applicants for new WUPs should be required to evaluate whether portions of their reuse quantities should be allocated to restoring natural systems.
 - FDEP should prepare scientifically based recovery plans as part of a net benefit/offset strategy prior to committing to future public water supply sources that would cause additional impacts from resulting development.
- The CFWI Rules should be the State of Florida's first step towards a permanent solution for water problems.
 - Green Infrastructure/Multiple Benefit Projects should be a priority for meeting future water demands.
 - The CFWI Rules should incentivize the identification of historical wetland watershed storage opportunities that could be transformed into green infrastructure projects as part of the water supply planning effort;
 - The rule should incentivize public/private partnerships to create green infrastructure projects. This could be accomplished through the following means:
 - Create recovery/restoration plans that all levels of government and the private sector can support, including:
 - Targeted wetland mitigation banks;
 - Regional stormwater ponds that generate aquifer recharge and development credits;
 - Water budget analyses that govern water allocations to both human and natural system use;
 - The creation of watershed management plans that determine the quantities and quality of water that needs to be allocated for all uses;
 - Future development using water from water supplies created under the new rules should be 'water neutral' and invest in water resource projects that mitigate for all impacts to water resources.
 - Establish non-traditional funding strategies, that incentivize all of the above, including the following:
 - Regional stormwater ponds that offer credits for future development;
 - Payment for environmental services programs that incentivize more water storage;
 - Targeted wetland mitigation banks, where public agencies can be partners to facilitate restoration in designated locations;
 - Creation of watershed Sector Plans that account for new growth and expedite future development permits if the end result is a restored natural system;

- The CFWI rules need to create a link between the management of land as a fundamental premise that supports water management. Currently, local communities approve of developments that impact water resources. Existing ERP rules also allow more impacts.
 - To help guide new development in the CFWI using required alternative sources of water, FDEP should develop model land development guidelines that can be used by local communities to help solve water problems as growth and development occur;
 - Incentives need to be created for local communities to adopt a water neutral approach to development.
 - The state permitting process for water quantity, quality and natural systems needs to be coordinated to ensure that the land/water connection is managed effectively.
- The new rule should include an effort to document the success of the CFWI planning process.
 - New research indicates that groundwater levels can be determined using dark fiber and acoustic sensing devices. DEP should consider using technology is assist with the documentation effort.
- In short, Winter Haven encourages FDEP to take this opportunity to set a course in Florida that will permanently solve problems for all aspects of water resources prior to the significant investment and economic growth that is expected as a result of future projects...growth that could take away many opportunities for future recovery.
 - To summarize: Winter Haven recommends that FDEP incorporate the One Water/Green Infrastructure approach within the CFWI rules, where all aspects of water are solved simultaneously, including water supply, water quality, flooding and natural systems in light of the social, economic and environmental needs of the state.

Specific Comments on the Proposed Rules 62-41.300 - 62-41.305, including changes to the Applicant Handbook (DRAFT August 12, 2020)

- 62-41.301(4,5) – ‘Will not cause harm’.
 - Add a sub-paragraph (a) indicating that the resulting development from alternative sources of water cannot cause additional impacts to aquifer recharge, surface volume discharge or additional pollutants to surface water or groundwater systems.
- 62-41.304(3) – The phrase ‘adjusted by rainfall trends’ and ‘rainfall trends’ individually, is vague, as is the purpose of this approach, and needs to be clarified.
 - As worded, it could be interpreted that WUP could be issued, knowing that a waterbody is impacted by causes other than groundwater pumpage. It is known that rainfall patterns are changing. Permits should not be

reduced until a full recovery plan is developed that incorporates changing rainfall patterns.

- Section 62-41.301 indicates that WUPs ‘will not cause harmful alterations to natural systems’. A new paragraph needs to be included that no new permit will be issued that has any affect on levels or flows of any natural water body, and that helps natural systems recover.
- 62-41.304(3)(c)(1): Factors other than consumptive use of water
 - The term ‘based on best professional judgement’ used throughout is vague and needs to be replaced by ‘an FDEP appointed licensed hydrogeologist’.
- 62-41.304(4) – Development of MFL Recovery and Prevention Strategies:
 - Add a sub-paragraph to indicate that the quantities and the source of water, identification of specific projects, identification of funding sources and a specific timeline for implementation, must be identified in all recovery plans. Identified water amounts and sources must be reserved from future use.
 - Add a new sub paragraph that requires consideration for resulting future cumulative impacts, including future development and changing rainfall patterns, in all permit applications and approvals.
- 62-41.305: Adoption of Recovery Strategies
 - A provision needs to be included that recovery strategies need to be updated every 5 years and include quantities and sources of water needed for recovery, project types and locations, and a timeline and funding plan for implementation.

Specific Comments on CFWI Handbook Recommendations:

CFWI 1.2 Modification of Existing Permits

- This section should be re-worded to indicate that individual permits will be evaluated prior to proposed reductions to determine their overall impact on natural systems.
 - Broadly reducing permits based on regional scale planning models is not adequate for existing permits that have previously been evaluated with more detailed models.
 - Each permit has a different impact on priority natural systems. Wholesale reduction of permits by the same formula is arbitrary with no linkage to natural system protection.
 - Recovery plans need to be developed and adopted prior to requiring reductions in permits.

CFWI – 2.8.2 (All other Use Types)

- The City of Winter Haven would consider the wholesale reduction of permits, with no consideration for specific quantities and their specific impacts to natural

systems, not to be consistent with the existing laws and regulations governing water use permitting.

- The CFWI should evaluate each WUP in the region with specific and approved models to determine what quantity of water can be supplied and still meet the 'no harm' standard.
 - Winter Haven's existing permits were evaluated with the 'no harm' standard, with specific and approved hydrologic models, and deemed to meet the standards of existing regulations, including the prevention of harm. To change this based on a regional, planning level model, would be considered not to be based in the most recent scientific methods.
- If public supply permits are being reduced to help the UFA, and new permits issued for additional quantities from the UFA, this would be considered a significant impact to local rate payers for a benefit to other sectors of the economy. Permits for additional quantities of water should not be issued if existing permits are reduced.

CFWI – 2.8.3.2 Implementation of Offsets:

- The new rules should require the development of a plan to recommend specific offset projects to create the most benefit based on a comprehensive restoration plan. Permittees that would gain benefit could create a 'cooperative' of permittees which could join together to develop restoration projects, create water use permit benefits and also have the most benefit towards restoring natural systems. Not creating an overall plan will create a hap-hazard arrangement of offset projects that may not maximize regional benefits.
- The State of Florida should guarantee 75% of funding for offset projects for communities that create alternative sources and have a net benefit to the natural system. This funding should be generally tied into the value of water and proposed construction projects from reduced permits that the community is required to relinquish from existing permits.
 - As an example, if permit reductions to meet 2025 demands occurred, the value of water connected with the reductions for Winter Haven would be approximately \$60M.
 - Grant programs also need to consider the cost of operating and maintaining projects in perpetuity.

CFWI – 2.8.3.2 Substitution Credits or Land Use Transitions

- The standards and direction in this section are not clear. Specific language needs to be included that indicate how land use transitions and resulting permit transfers will be managed and evaluated as future development occurs so that local communities can be assured that this benefit will be scientifically based.
 - It is recommended that a rule be developed that local communities can claim a certain percentage of water from retired wells as development

- occurs based on the distance from public supply wells and the needed benefit to natural systems.
 - It would also help to ensure that local communities can drill new wells to take advantage of retired well quantities.
 - Local utilities should not be required to reduce permits and have the quantities of agriculture wells taken over by urban development permitted to other uses.
- The term 'substitution credits' is not clear.
 - The CFWI rules should make provisions for applicants to work with other permittees to reduce permitted quantities in order to increase withdrawals from the UFA. It is unclear as to whether this would be considered as a substitution credit.
 - As an example, if local communities can work with agriculture to reduce permitted quantities, the community should get a permit credit.

CFWI – 2.8.7 Competing Applications

- A provision needs to be added that all applications located within the cone of influence of proposed new permit applications need to be notified by mail of the new permit request.

CFWI – 3.4 Harmful hydrologic alterations to natural systems, including wetlands or other surface waters.

- A provision needs to be added that WUP applicants can mitigate for wetland impacts by either creating wetlands or purchasing credits from wetland mitigation banks.
 - Local government needs to be authorized to create wetland mitigation banks and regional stormwater ponds that will result in a net benefit to water resources, including proposed withdrawals and the resulting future projects that would benefit from the availability of new water sources.
- A provision needs to be added that the proposed cumulative activities from the resulting projects using permitted quantities, including future development, agriculture, industry, and commercial use, need to be considered as a part of the impacts from the permit request.
 - The rules should establish a link between the ERP and WUP process so that the result of WUP issuance does not result in additional impacts to water resources, including aquifer recharge, wetland impacts and surface water discharge rate and volume.
- The new rules do not seem to acknowledge that a significant effort is planned to re-evaluate and establish new MFLs.
 - New MFLs need to be developed prior to reducing existing permits and creating recovery strategies to ensure that reductions are needed for recovery.

- Many of the impacts in the Winter Haven region have been caused by historical drainage and aquifer withdrawals other than public supply.
 - Public supply should not have to foot the bill for regional recovery when others have benefitted from historical withdrawals that have caused considerable impacts.
 - If permit cut backs are required for restoration of water resources, there should be a permanent funding mechanism in place for the state to fund at least 75% of projects needed for restoration that were caused by factors other than public supply.
 - Communities perpetual operation and maintenance costs of alternative sources needs to be considered in the funding calculation.

CFWI – 3.5 and 3.6: The term ‘harmful to the water resources’ needs to be defined, especially in terms of how it is connected to the ‘prevent significant harm’ standard used for MFLs.

CFWI – 4.0 Harm to Existing Offsite Land Uses:

- Section A: The term ‘significant’ needs to be removed.
- Section C: The term ‘Adverse’ needs to be replaced with “Increased”
- Section D: The term ‘Adverse’ needs to be replaced with “Increased”
- A provision needs to be added to include the intended future use of the water, including agriculture, industry and future development, also not cause additional harm.

CFWI - 5.0 Special Limiting Permit Conditions:

- Section C: Self supplied agriculture, recreational or landscape irrigation use
 - Winter Haven is concerned that new irrigation wells will impact groundwater levels at the local scale and circumvent the intended purpose of the regulations.
 - A provision needs to be added that new wells for residential irrigation in areas where public supply is available, wells will no longer be permitted and a sunset date should be established to revoke all residential irrigation permits at some point in the future.

Summary

- Winter Haven is encouraged by the state’s bold actions to protect natural systems, but with these bold actions comes a commitment to develop specific plans, long term strategies and funding sources that will permanently protect natural systems.
- Winter Haven offers its support to do what is necessary and scientifically based to protect natural systems. We ask that the state also commit to putting plans in

place to permanently solve water resource problems and that water will be managed as an integrated system, including the social, economic and environmental benefit that water provides to many communities.