

2021 Handbook of Florida Water Regulation: Consumptive Use¹

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Preface

This handbook is designed to provide an accurate, current, and authoritative summary of the principal federal and state (Florida) laws that directly or indirectly relate to agriculture. This handbook provides a basic overview of the many rights and responsibilities that farmers and farmland owners have under both federal and state laws as well as the appropriate contact information to obtain more detailed information. However, the reader should be aware that because the laws, administrative rulings, and court decisions on which this handbook is based are subject to constant revision, portions of this publication could become outdated at any time. Several details of cited laws are also left out due to space limitations. This handbook is provided as an educational text for those interested in water use and water resource issues in Florida.

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Consumptive Use Overview

Consumptive use is any use of water that reduces water availability in the source from which the water is withdrawn or diverted. For example, this can be pumping of water from the aquifer for public supply or agricultural irrigation.

Who regulates consumptive use?

Florida's law recognizes that water constitutes a public resource benefiting the entire state. Florida's water use policy promotes water conservation to sustain human, natural resource, fish, and wildlife preservation, and prevent wasteful water uses. Both the Florida Department of Environmental Protection (FDEP) and the Florida Water Management Districts (FWMD), which are charged with managing water resources and maintaining the state's reserves of usable water at an acceptable level, are authorized to require water use/consumptive use permits and impose conditions on those permits. FWMDs are responsible for issuing these permits and should be consulted before undertaking any consumptive use of water resources in Florida (see FE616, Contact Agencies).

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What permits are required for consumptive use?

All water withdrawals and uses must be permitted (unless explicitly exempted in existing laws and regulations). There are two types of permits:

1. *General permits*: the FWMDs authorize anyone to withdraw certain amounts of water as long as the withdrawal isn't otherwise exempt. A permit application is not required for a General Permit by Rule.
2. *Individual permits*: permits are required when withdrawal volume equals or exceeds established daily limits that are measured in gallons per day or when withdrawal wells or surface intake facilities exceed certain specifications (such as intake diameter of six inches).

When a party's water usage reaches certain predetermined threshold levels, the appropriate FWMD will require an *individual* consumptive water use permit. It is highly recommended to consult the appropriate FWMD regarding the threshold levels that apply to specific operations. Permit application is required for the individual permit type.

How do I obtain an individual consumptive use permit?

To receive a permit for a proposed water use, an applicant must establish that the use is reasonable and beneficial; that is "the use of water in such quantity as is necessary for economic and efficient utilization" (Florida Statute, Chapter 373, section 373.019). The applicant must also establish that the proposed use will not interfere with any existing legal water uses and is consistent with public interests.

In order to be considered for a permit, an application must be filed with the governing board of the appropriate water management district or the Department of Environmental Protection (see Florida's water permitting portal at: <http://flwaterpermits.com/>). All permit applications must contain:

1. The name of the applicant and address or, if a corporation, headquarters address
2. The date of filing
3. The date set for a hearing, if any
4. The source of the water supply
5. The quantity of water being requested

6. The use to be made of the water and any limitation thereon
7. The place of use
8. The location of the well or point of diversion
9. Such other information as the governing board or the department may deem necessary

Is a hearing required for a permit?

If the proposed application is for less than 100,000 gallons per day, the governing board or the department may consider the application and any objections thereto without a hearing. If the proposed application is for 100,000 gallons per day or more and no objection is received, the governing board or the department, after proper investigation by its staff, may, at its discretion, approve the application without a hearing.

What happens if there are competing consumptive use permit applications?

When there are competing consumptive use permit applications for the same water source (e.g., an aquifer that is already under a stress from significant water withdrawals), a renewal application is given preference over an initial application. However, where neither application is a renewal, the water management district must give priority to the user closest to the source.

What kind of water is permitted for consumptive use?

For the most part, the water permitted for consumptive use is groundwater. Other sources of water permitted include surface water (such as in the Tampa Bay and Lake Okeechobee areas) and reclaimed water provided by domestic wastewater treatment plants (Chapter 373, Florida Statutes, Section 373.250). Reclaimed water is permitted by the FWMDs to promote and encourage water conservation. Contact your local FWMD to find out more about reclaimed water for consumptive use.

New consumptive use permits for groundwater withdrawals and the renewal or modification of permits will require monitoring of withdrawals, if the permit authorizes 100,000 gallons or more per day from a well with an inside diameter of 8 inches or more. The results of such monitoring should be reported to the appropriate water management district at least annually (Chapter 373, Florida Statutes, Section 373.223).

What happens if less water is used due to water conservation?

If actual water use is less than the permitted water use due to documented implementation of water conservation measures beyond those required in a consumptive use permit (e.g., due to implementation of best management practices), the permitted allocation may not be modified solely due to such water conservation during the term of the permit. Water management districts adopt rules further incentivizing water conservation (Chapter 373, Florida Statutes, Section 373.227).

What are the effects of consumptive use permits?

Permits are only granted for fixed periods of time according to the reasonable assurances of the applicant that the conditions will not deteriorate. Except for municipalities, government bodies, public works, or public service corporations, they may not exceed twenty years and are usually granted for much shorter periods. When the nature of a proposed use is such that the permit application process may be lengthy, the appropriate FWMD may issue a temporary permit. Transfer of permits between activities identical in nature at the same location and for the same water source is usually allowed and conditions of the permit usually remain the same. There are different requirements for individual and general water permits.

When is a consumptive use permit revoked?

Any failure to continually observe the terms provided by a permit may result in its revocation. Other grounds for revocation may include unsatisfactory mitigation (reduction or lessening) of environmental damage from the use.

Sources

Chapter 373, Florida Statutes, Sections 373.203 to 373.250

Title 40, Florida Administrative Code (individual FWMD rules)

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