

Handbook of Florida Water Regulation: Water Management Districts¹

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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decisions on which this handbook is based are subject to constant revision, portions of this publication could become outdated at any time.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 distributed with the understanding that the authors are not engaged in rendering legal or other professional advice, and the information contained herein should not be regarded as a substitute for professional advice. This handbook is not all inclusive in providing information to achieve compliance with the federal and state laws and regulations governing water protection. For these reasons, the use of these materials by any person constitutes an agreement to hold harmless the authors, the Florida Cooperative Extension Service, the Institute of Food and Agricultural Sciences, and the University of Florida for any liability claims, damages, or expenses that

may be incurred by any person as a result of reference to or reliance on the information contained in this handbook.

FWMD Overview

Except for the South Florida Water Management District (SFWMD) and the Southwest Florida Water Management District (SWFWMD), which were created statutorily to address flooding and water shortage problems, the Florida water management districts (FWMD) were created as public agencies pursuant to Chapter 373, Florida Statutes, known as the Florida Water Resources Act of 1972. The five FWMDs play a significant role in the regulation of agricultural water control and use (see Figure 1 for a map of the areas under the jurisdiction of each FWMD).

Responsibilities of the FWMDs include:

- Management of water and related land resources via promotion of conservation
- Proper utilization of ground and surface water resources
- Regulation of dams, impoundments, reservoirs, and other structures to alter surface water movement
- Combating damage from floods, soil erosion, and excessive drainage

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- Assisting local governments in developing comprehensive water management plans, particularly by providing data on water resources (FWMDs are authorized to perform various field investigations and to provide works for the beneficial storage of water)
- Maintenance of navigable rivers and harbors and the promotion of the health, safety, and general welfare of the people of the state (directly attached to this general welfare consideration is the power to implement water shortage emergency plans)
- Participation in flood control programs and the reclamation, conservation, and protection of lands from water surplus or deficiencies
- Maintaining water management and use facilities to determine the levels of water to be maintained in each district's bodies of water (districts may establish minimum flows for their works and water courses below which further withdrawals would be significantly harmful to the water resources or ecology, and minimum water levels for ground and surface water)
- Developing annual strategic plans and reports that outline goals and successes, as well as detail the management of each FWMD's water resources (e.g., in the South Florida Water Management District, this responsibility includes reports on Lake Okeechobee and Everglades protection and restoration)
- Working with state and local governments to develop alternative water supplies as part of a twenty-year (minimum) regional water supply plan

What Is the Structure of FWMDs?

Each district is run by a governing board consisting of nine members, except the Southwest Florida Water Management District, which has thirteen. The members, who are selected from statutorily designated areas within each district, serve staggered four-year terms and are appointed by the governor and confirmed by the state senate. The governing board sets the policies that will best effectuate the district's powers. Generally, an executive director is responsible for the operation of each district, including the implementation of policies and rules. Typically, each district is divided into divisions that handle the various permitting programs. Each district is fully equipped to conduct its own inspections, testing, and impact studies.

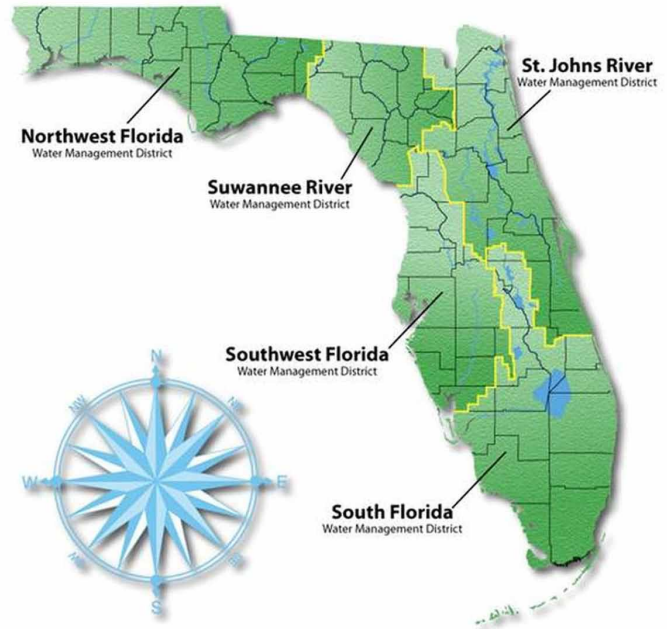


Figure 1. Florida's five water management districts (Source: St. Johns River Water Management District, 2010, <http://www.sjrwmd.com/maps.html>)

One district, the Southwest Florida Water Management District, is further divided into watershed basins, which are overseen by basin boards. Each board must consist of at least three people, one from each member county. Basin board members are appointed by the governor, subject to confirmation by the state senate, and serve staggered three-year terms. Basin boards have the authority to prepare engineering plans for water resource development, create secondary water-use plans, submit annual budgets, approve construction plans of work of their district, and provide assistance to local water supply authorities. Basically, basin boards are responsible for identifying water resource concerns and problems within their respective areas and adopting budgets to address and fund the resolution of such concerns.

What Permits Are Issued by FWMDs?

The powers of FWMD governing boards include administering the permit programs of Chapter 373, Florida Statutes. Thus, FWMDs are responsible for permitting the following:

- Wells
- Management and storage of surface waters
- Consumptive uses of water

Each FWMD has specific criteria detailing the types of activities that require permits, the contents of permit applications, the procedures that surround the submission of applications, and areas specifically exempted from permitting requirements. Florida's governor and state cabinet, sitting as the Land and Water Adjudicatory Commission, have authority to review any order or rule of a FWMD.

More information about permits and permit requirements by the FWMDs can be found at the FWMD permitting portal at http://flwaterpermits.com/home/floridawater_permits.html.

What Is the Florida Surface Water Quality Plan?

The Florida Department of Environmental Protection (FDEP) has been directed to prepare the state water use plan and to foster interagency agreements to achieve the Florida Surface Water Quality Plan. The water use plan is developed by FDEP through consultation with federal, state, and local agencies, and particularly the FWMDs. The plan includes all water in the state and is found in Florida Statutes Section 403.067 and Florida Administrative Code Rule 62-302. Its main purpose is to recognize various interests competing for water-use rights and to allocate for these rights while retaining reasonable water quality and quantity control, thus promoting the goals of environmental protection, proper drainage, flood control, and water storage, and ensuring a reliable water supply for Floridians in the future.

In addition, the Florida Surface Water Quality Plan links the purposes of the Florida Water Resources Act with the purposes of the Florida Air and Water Pollution Control Act, Chapter 403, Florida Statutes, through its water quality standards. The net result is that FDEP retains central responsibility for the collection of scientific data and information regarding water resources, with the central permitting responsibilities being assigned to FWMDs.

FDEP also retains direct regulatory power over the following:

- Point source discharges
- Dredge and fill
- Groundwater discharges
- Solid and hazardous waste concerns

- Leaking underground storage tanks

In contrast, FWMDs are largely responsible for issuing permits for various types of water use, and are the governmental bodies in charge of allocation and control of water resources for which there are many competing interests.

Due to the 2009 settlement of a water quality lawsuit, the United States Environmental Protection Agency (EPA) established a numerical water quality standard for Florida lakes and flowing waters that is more stringent than the previous state water quality standard. FDEP and FWMDs are currently working to develop strategies for implementing the new standard in a way that fits the needs and goals of the state. Currently, the new regulations are scheduled to take effect in March 2012.

What Can FWMDs Tax?

Most indicative of their broad powers is the ability of FWMDs to levy ad valorem taxes (property taxes). Ad valorem taxes are levied based on the value of the property in question. The Florida Constitution establishes a millage cap, and millage rates are additionally limited by statute.

Each FWMD is different. Taxing authority is vested in individual FWMDs through basin boards. Basin boards may request that taxes be levied, but may not impose taxes themselves. As with other government tax provisions, a landowner's failure to pay can result in a lien on the taxed property, including the homestead, and ultimately, the vesting of title by tax forfeiture to the state.

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