

Notice of Emergency Rule

WATER MANAGEMENT DISTRICTS

St. Johns River Water Management District

RULE NO.: RULE TITLE:

40CER17-02 Supplemental Regulatory Measures for Silver Springs

SPECIFIC REASONS FOR FINDING AN IMMEDIATE DANGER TO THE PUBLIC, HEALTH, SAFETY OR WELFARE: The District is required by section 373.042(2)(a), F.S., to adopt a minimum flow or minimum water level (MFL) for Silver Springs (an Outstanding Florida Spring) by July 1, 2017. Based on the best available information, all three recommended minimum flows and levels in proposed 40C-8.031(7), F.A.C., are currently being achieved; however, the recommended minimum frequent low flow and level for Silver Springs would not be met under projected water use demands through the 20-year planning horizon. Thus, in accordance with section 373.0421(2), F.S., the District has concurrently approved an MFL prevention strategy to prevent the existing flows and levels from falling below the established minimum flows and levels. That strategy includes a regulatory component, consisting of new rules to prevent the existing flows and levels from falling below the minimum flows and levels for Silver Springs. To ensure that the District meets its statutory requirement under section 373.0421(2), F.S., to adopt the regulatory component of the MFL prevention strategy in proposed 40C-2.101, F.A.C., by July 1, 2017, to prevent the existing flows and levels from falling below the proposed minimum flows and levels for Silver Springs, the District is adopting this emergency rule. The basis for this finding of an immediate danger to the public health, safety, or welfare also includes section 373.042(2)(c), F.S., which provides as follows:

The Legislature finds as provided in s. 373.801(3)(b) that the adoption of minimum flows and minimum water levels or recovery or prevention strategies for Outstanding Florida Springs requires immediate action. The department and the districts are authorized, and all conditions are deemed to be met, to use emergency rulemaking provisions pursuant to s. 120.54(4) to adopt minimum flows and minimum water levels pursuant to this subsection and to adopt recovery or prevention strategies concurrently with a minimum flow or minimum water level pursuant to s. 373.805(2). The emergency rules shall remain in effect during the pendency of procedures to adopt rules addressing the subject of the emergency rules.

REASONS FOR CONCLUDING THAT THE PROCEDURE USED IS FAIR UNDER THE CIRCUMSTANCES: The procedure used by the District to adopt the emergency rule is fair under the circumstances. Affected persons have had a minimum of one week prior notice of the emergency rule. The District included the proposed emergency rule in the Governing Board's monthly meeting packet which is available to the public at a minimum of seven days prior to the day that the Board and Executive Director approved and filed the emergency rule for adoption. The public is given an opportunity to comment on all matters before the Board during its meetings. The Board's meeting packet information is posted on the District's website. Additionally, on March 9, 2017, the District posted on its website a copy of the regulatory part of the prevention strategy proposed in rule 40C-2.101, F.A.C., and stated that the District intended to adopt the prevention strategy rules as emergency rules by April 13, 2017. At the rule workshop held on March 16, 2017, District staff again stated that the District intended to adopt the prevention strategy rules as emergency rules by April 13, 2017. This emergency rule will

also be posted on the District's website.

SUMMARY OF THE RULE: Until the regulatory part of the prevention strategy proposed in rule 40C-2.101, F.A.C., becomes effective, this emergency rule will temporarily prevent the existing flows and levels from falling below the minimum flows and levels for Silver Springs in emergency rule 40CER17-01 and in proposed 40C-8.031(7), F.A.C. Among other things, this emergency rule will: (1) define terms used in the rule; (2) delineate the boundaries of the area in which the new rule applies; (3) restrict certain upper Floridan groundwater uses that have the potential to impact Silver Springs without a supplemental water supply or offset project to no more than demonstrated 2024 demand; (4) provide options for addressing potential impacts to Silver Springs; (5) provide a temporary groundwater allocation for certain permittees that are diligently pursuing a supplemental water supply or offset project; (6) clarify that irrigation allocations for agricultural, recreational, or landscape uses include both an allocation for average climatic conditions as well as drought conditions; and (7) provide criteria for self-relocations of reasonable-beneficial permitted allocations.

THE PERSON TO BE CONTACTED REGARDING THE EMERGENCY RULE IS: Thomas Mayton, Jr., Esq., St. Johns River Water Management District, Office of General Counsel, 4049 Reid Street, Palatka, Florida 32177, (386)329-4108, tmayton@sjrwmd.com.

THE FULL TEXT OF THE EMERGENCY RULE IS:

40CER17-02 Supplemental Regulatory Measures for Silver Springs

(1) Effect of Supplemental Rules. These “Supplemental Regulatory Measures for Silver Springs” shall be adopted by the District, as a component of the overall prevention strategy for Silver Springs. In adopting these rules, the District acknowledges the increasing stress on Silver Springs and the mandate of the legislature to foster the development of additional water supplies and avoid the adverse effects of competition. However, these rules do not abrogate the rights of the Governing Board or of any other person under Section 373.233, F.S. This regulatory framework provides a comprehensive strategy for allocations of available Upper Floridan groundwater and expeditious development of alternative water supplies and offset projects to minimize competition and thereby provide greater certainty of outcome than competition.

(2) Definitions.

(a) Demonstrated 2024 Demand - the quantity of water from the Upper Floridan aquifer needed to meet demands in 2024. Demonstrated 2024 Demand will be calculated utilizing the methodologies described in Section 2.2 of the Applicant's Handbook that is incorporated by reference in 40C-2.101(1)(a), F.A.C., and water use data.

(b) Existing permitted uses – permitted uses as of April 12, 2017.

(c) Silver Springs MFLs – the minimum flows and levels for Silver Springs in 40CER17-01 or as adopted in rule 40C-8.031, F.A.C., whichever is in effect.

(3) Evaluation of Potential Impacts. All applications, including applications for renewals, modifications, and new uses, shall be evaluated for their potential individual and cumulative impacts on the Silver Springs MFLs. Potential impacts to the Silver Springs MFLs shall be assessed using the Northern District Groundwater Flow Model Version 5.0, effective April 12, 2017, which is hereby incorporated by reference and available at St. Johns River Water Management District, Bureau of

Resource Evaluation & Modeling, 4049 Reid Street, Palatka, Florida 32177-2529, Tel. (386) 329-4500, and at Department of State, Florida Administrative Code and Register, R.A. Gray Building, 500 South Bronough Street, Tallahassee, FL 32399-0250, Tel. (850)245-6270. This Emergency Rule and all subsections thereof shall not apply within the Central Florida Water Initiative Area, as defined in Paragraph 373.0465(2)(a), F.S. (2016).

(4) **Existing Permitted Uses.** Existing permitted uses shall be considered consistent with the Prevention Strategy for uses up to the Demonstrated 2024 Demand, or its permitted allocation in 2024, whichever is lower.

(5) **Individual Permit Applicants that do not have a Potential Impact to the Silver Springs MFLs.** Permit applications that do not demonstrate a potential impact to the Silver Springs MFLs based on the total requested allocation shall be issued provided the applicant meets the conditions for issuance.

(6) **Additional Review Criteria for all Individual Permit Applicants that have a Potential Impact to the Silver Springs MFLs.**

(a) **Renewals and Modifications with a Requested Allocation Less Than or Equal to the Demonstrated 2024 Demand.**

1. Renewals and modifications of existing permitted uses with requested allocations from the Upper Floridan aquifer less than or equal to the Demonstrated 2024 Demand shall be issued provided the applicant meets the conditions for issuance; however, an applicant may seek a duration that extends beyond 2024 for that level of allocation.

2. **Exceptions.** The limitation in Paragraph (6)(a)1. on groundwater allocations to an amount no greater than a permittee's Demonstrated 2024 Demand shall not limit permitted groundwater withdrawals from:

a. Aquifer storage and recovery wells that receive only surface water, stormwater, or reclaimed water, when the volume of water withdrawn does not exceed the volume of water injected; or

b. The surficial aquifer immediately below or adjacent to a stormwater management system or surface water reservoir where any drawdown in the surficial aquifer will be offset by recharge from the system or reservoir.

(b) **Renewals and Modifications with Requested Allocations Greater Than the Demonstrated 2024 Demand.** Renewal and modification applications for existing permitted uses proposing an allocation of groundwater from the Upper Floridan aquifer greater than the Demonstrated 2024 Demand shall provide reasonable assurance of elimination or offset of potential impacts to the Silver Springs MFLs for that portion of the requested allocation that exceeds the Demonstrated 2024 Demand.

(c) **New Permits.** In addition to meeting the conditions for issuance, applications that request the use of groundwater from the Upper Floridan aquifer for a duration beyond 2024 shall provide reasonable assurance of elimination or offset of potential impacts to the Silver Springs MFLs for the requested allocation.

(d) **Methods for Addressing Potential Impacts.** An applicant may eliminate or offset potential impacts to the Silver Springs MFLs by implementation of one or more of the options listed below:

1. Propose an alternative water supply, as defined in Section 373.019(1), F.S., sufficient to meet the additional demand, and identify a schedule for implementation, construction and operation for the alternative water supply system. An alternative water supply will be approved under this rule if it is adequate to meet the reasonable increased demands without

causing harm to the water resources of the area and meets all other permitting criteria in Chapter 40C-2, F.A.C.

2. Propose adequate offset projects to eliminate potential impacts to the Silver Springs MFLs, and identify a schedule for implementation, construction and operation of the offset project(s). Offset projects may include, but are not limited to, the use of impact offsets [Subsection 62-40.416(7), F.A.C.] and recharge systems. Subsection 62-40.416(7), F.A.C., is incorporated by reference in 40C-2.101(1)(b), F.A.C. For offset projects that are not addressed by Subsection 62-40.416(7), F.A.C., the following requirements apply:

a. The benefit of any offset project, or a portion thereof, shall accrue to the entity providing the offset project, or one or more entities designated by the providing entity, so long as the providing entity or designated entity demonstrates a demand for the water and meets the conditions for permit issuance. If the providing entity or designated entity cannot demonstrate a demand for all the water made available by the offset project during the recommended duration of the permit, any remaining water shall be available for use in the following order:

(I) Deficits associated with existing exempt and sub-threshold uses.

(II) Deficits associated with anticipated exempt and sub-threshold uses.

(III) Deficits associated with existing permitted uses.

(IV) Applications for new uses or increases in allocation in accordance with District rules.

b. The proposed withdrawal, after application of the offset project credit, must result in no net adverse impact on the limited water resource.

c. If an applicant meets the conditions for permit issuance after consideration of an offset project (either as a providing entity or designated entity), the District shall incorporate the project into the permit. The duration of an offset project must be, at a minimum, equal to or greater than the duration of the consumptive use permit in which it is incorporated.

d. When reviewing an application for renewal of a consumptive use permit containing an offset project, the District shall renew the allocation based on the continuation of the offset project provided the conditions for permit issuance are met.

e. Credits shall not be granted for past actions or actions taken under existing permits, unless the credits are already authorized in a permit. This limitation shall not restrict the District's consideration of the effect of past actions when considering the potential impacts of a permit application, or consideration of a permittee's request to modify an existing permit to quantify the amount of any credit remaining available.

f. Offset projects recognized in a consumptive use permit cannot be transferred to other users, except in the same manner as the permit itself and in compliance with applicable water management district rules.

3. The District anticipates that its water resource development projects and its designation as a receiving entity of offsets from District's cost-share projects may result in the development of new quantities above and beyond the quantities necessary to ensure that the Silver Springs MFLs will be met. All or a portion of these new quantities that are not reserved or otherwise designated for the water resource will be made available to permit. If an applicant has contributed to a District water resource development project, the applicant may apply for quantities made available through a District water resource development project as an offset to potential impacts to the Silver Springs MFLs, provided the applicant demonstrates that:

a. Both the proposed withdrawal and the water resource development or cost-share project affect the Silver Springs MFLs.

b. The quantity developed in excess of the quantity reserved or otherwise designated for Silver Springs has been determined.

c. The proposed quantities will not interfere with quantities reserved or otherwise designated by the District for water resource development.

4. Permanently retiring from use the reasonable-beneficial quantities associated with one or more CUPs that impact the Silver Spring MFLs. The amount of offset credit for retiring CUPs will be limited to the amount of reduction in potential impacts to the Silver Springs MFLs associated with the retired quantity. For agricultural, recreational, and landscape irrigation uses, the retired quantity will be based on the average annual allocation which is the amount of supplemental irrigation required during a five in ten rainfall condition. For all other use types, the retired quantity will be based on the actual permitted allocation.

For each option selected under Subsection (6)(d), an applicant must provide reasonable assurance that the option will be implemented as proposed.

(7) **Conservation.** In determining the amount of offsets that must be developed as set forth in Section (6) above, the applicant may subtract the portion of its demand that the applicant demonstrates will be satisfied by water conservation under Subsection 2.2.2.5. of the Applicant's Handbook that is incorporated by reference in 40C-2.101(1)(a), F.A.C.

(8) **Temporary Allocation.** A permittee that will lack sufficient supplemental water supplies or offsets after 2024 from which to obtain the increase in quantity above its Demonstrated 2024 Demand shall be allocated a temporary amount of groundwater to meet that increase only if it has exercised due diligence to meet all schedule requirements in the permit for developing and using supplemental water supply and providing that other conditions for issuance in Rule 40C-2.301, F.A.C., and the Applicant's Handbook that is incorporated by reference in 40C-2.101(1)(a), F.A.C., are met. Any such temporary allocation shall cease when water from the supplemental water supply or offset project becomes available.

(9) **Irrigation Uses.** The reasonable need for an agricultural, recreational, or landscape irrigation use is based on the amount of water needed to supply the supplemental irrigation requirements of the type of crop, turf or landscape grown. In determining reasonable need, the District will determine the supplemental irrigation requirements for both drought and average annual conditions. Drought allocation will be considered the amount of supplemental irrigation required during a two in ten year rainfall condition. Average annual allocation will be considered the amount of supplemental irrigation required during a five in ten year rainfall condition. This quantity does not include crop protection.

(10) **Self-Relocation.** A Permittee with existing permitted impacts on Silver Springs may modify its consumptive use permit to relocate to a different property all or a portion of the used and unused reasonable-beneficial permitted quantity. When relocated, the withdrawal of the quantities cannot increase impacts to Silver Springs and must meet all other applicable permitting criteria included in Chapter 40C-2, F.A.C., and the Applicant's Handbook that is incorporated by reference in 40C-2.101(1)(a), F.A.C. A Self-Relocation cannot include any change in ownership, control, Use Type or increase in quantities. Crop rotation, by planting and irrigating non-contiguous properties within the same locale in a structured, revolving fashion, is allowed under a single permit and is not considered Self-Relocation.

THIS RULE TAKES EFFECT UPON BEING FILED WITH THE DEPARTMENT OF STATE
UNLESS A LATER TIME AND DATE IS SPECIFIED IN THE RULE.
EFFECTIVE DATE: April 12, 2017