

FWEA UTILITY COUNCIL  
WATER SUPPLY/CONSERVATION LEGISLATIVE POSITIONS

December 6, 2002

1. Water Conservation Plan

- a) State water law should recognize that a local public utility has the responsibility and right of establishing rates for its services.
- b) Adopting a water conservation rate structure should be one of many water conservation measures a utility may elect to pursue. If a utility elects to adopt a water conservation rate structure, the nature and charges included in that structure should be determined by the utility and the utility will demonstrate that its rate structure encourages water conservation.
- c) To meet water conservation requirements of consumptive use permitting, utilities should be allowed the flexibility to choose from various water conservation measures and develop a water conservation plan. The water conservation measures from which a utility could select would include additional water conservation education, informative billing, leak abatement, providing additional reuse, providing rebates or other incentives for using water conserving fixtures and appliances, working with the affected local government to adopt ordinances requiring water conserving landscaping and plumbing fixtures, metering, and water conservation rates. This water conservation plan should be a goal-based program. The utility would decide which measures to include in the plan.

2. Reuse of Reclaimed Wastewater

- a) State water law should encourage incentive based programs for reuse implementation when feasible and cost effective without intrusive regulations.
- b) Reclaimed wastewater should only be implemented where economically, technically and environmentally feasible. Technical and environmental feasibility should address public health risks, safety and risks to environment.
- c) Consumptive use permit conditions should not require a utility to provide reclaimed wastewater for reuse. Section 373.250, F.S., allows the water management districts to require potential users of reclaimed wastewater to use that wastewater, but should not be construed to empower the water management districts to mandate that a utility provide reclaimed wastewater for reuse.
- d) Determinations of the feasibility of providing reclaimed wastewater for reuse should be governed solely by section 403.064, F.S., and evaluated by DEP during the permitting process for wastewater treatment plants. Section 403.064, F.S., should be amended to clarify that the water management districts must accept the reuse feasibility analysis prepared by the wastewater provider for DEP pursuant to that section. This will ensure that the water management districts cannot second guess the conclusions of these studies.

3. Water Reservations

- a) Section 373.223(4), F.S., should be amended to provide that the water management districts may reserve water from use only (i) if needed to prevent significant harm to fish and wildlife, (ii) if needed to protect public health and safety, or (iii) if needed to fulfill the mandates of the Comprehensive Everglades Restoration Plan (Section 601, Title VI, of the Water Resources Development Act of 2000) Pub. L. no. 106-541, section 601, 114 Stat. 2572. Protection of public health and safety should be deemed equally important to preventing significant harm to fish and wildlife. Protecting public health and safety may include reserving water for potable supply.

- b) Because reservations of water can have the same effect on consumptive uses as establishing minimum flows and levels (MFLs), establishing reservations of water should be subject to the same procedural safeguards as exist for the establishment of MFLs. To this end, the reservations of water should be subject to the following:
1. Reservations of water must be adopted by rule.
  2. The water management districts must establish a priority list of waterbodies for which water will be reserved including a timetable for when each reservation will be accomplished. This priority list must be published in the Florida Administrative Weekly.
  3. If requested by any substantially affected entity, the water reservation as well as the methodology used to establish the reservation must be subject to independent scientific peer review.
  4. Any water management district rule adopting a water reservation must clearly indicate how all presently existing legal uses of water will be protected. Reservations of water made to satisfy the mandates of the Water Resource Development Act of 2000 must also identify how sources of water existing as of December 11, 2000, will be protected.
  5. If a water reservation is projected to affect an existing legal use of water in the future, or if the water reservation will limit the use of water which a district's regional water supply plan estimates will be obtained from the water body subject to the reservation, then the water management district must implement a water supply protection strategy to provide for adequate and affordable water supplies for all existing and projected reasonable-beneficial uses affected by the reservation. This water supply protection strategy must include development of additional water resource or water supply projects.

#### 4. Legislative Ratification of Chapter 62-40, F.A.C.

Because Chapter 62-40, F.A.C., constitutes a significant statement of state-wide water supply public policy, changes to that rule should not take effect until after adopted by the Environmental Regulation Commission and ratified by the Legislature.

#### 5. Local Sources First

- a) The concept of using local sources first is an artificial limitation that hinders obtaining adequate, affordable and sustainable water supplies. The statutory provisions implementing this concept should be revised to reflect the fundamental premise that Florida's waters are a statewide resource.
- b) The local sources first statutory provisions should be amended to provide an exemption from the local sources first consideration in following instances:
1. When a utility (or other water user) is implementing one or more options of an approved water management district regional water supply plan;
  2. When evaluating utility interconnects;
  3. When a single utility owns or operates facilities located in more than one county; and
  4. When there are negotiated agreements between water supplier and receiver.
- c) Resource development and transport of water shall ensure that each community has sufficient water supplies to meet their reasonable-beneficial needs.

#### 6. Reuse Cooperative Funding

- a) Florida Forever funding law allows the use of funds for water resource projects including reuse except for reuse transmission and distribution facilities. The Florida Forever law should be amended to clarify that Florida Forever funds can be used to cooperatively fund reuse transmission and distribution facilities.

- b) Section 373.1961, F.S., should be amended to allow the water management districts to establish a revolving loan trust fund to provide low to zero interest loans to cooperatively fund reuse facilities and other alternative water supply and non potable water transmission projects without bias.

#### 7. Water Resource Development

- a) The water management districts should be encourage to implement water resource development projects as expeditiously as possible in areas subject to regional water supply plans.
- b) The water management districts must identify how each water resource development project proposed will produce additional water available for consumptive uses. The water management districts should be required to identify quantify these amounts in their annual budgetary report to the Governor's office.

#### 8. Water Shortage Declarations

- a) A consumptive use permit applicant should not be required to demonstrate that it can comply with water shortage declarations as a requirement of obtaining its permit. The water management districts' ability to declare a water shortage declaration is a separate source of authority intended only to respond to short-term drought conditions.
- b) The water management districts should revise their water shortage declarations to be based on demonstrated cause and effect. In other words, a water shortage declaration should not be imposed unless the water management districts can demonstrate that the specific reductions in water use mandated by the declaration will improve water supply conditions. Additionally, the water management districts should be required to undertake a cost benefit analysis before imposing a water shortage declaration.

#182520 v3