GENERAL COUNSEL'S REPORT
March 26, 2019

Discussion Agenda

Rulemaking

Approval of Modification to Proposed Rule Language to Amend Rule 40D-8.041, Florida Administrative Code, to Adopt a Minimum Flow for the Rainbow River System

In June 2017, the Governing Board approved the initiation of rulemaking and proposed rule language to amend Rule 40D-8.041, F.A.C., to establish a minimum flow for the Rainbow River System. At the same meeting, the Governing Board also approved the initiation of emergency rulemaking and proposed emergency rule language to establish a minimum flow for the Rainbow River System. The proposed rule language and the proposed emergency rule language were identical. The emergency rulemaking process was necessary to ensure that the District met the July 1, 2017 statutory deadline to adopt a minimum flow for the Rainbow River System, as required by Section 373.042, F.S. Emergency Rule 40DER17-01, F.A.C., establishing a minimum flow for the Rainbow River System, became effective on June 29, 2017.

On February 4, 2019, the District published the Notice of Proposed Rule for the minimum flow for the Rainbow River System in the Florida Administrative Register. This proposed rule would amend Rule 40D-8.041, F.A.C., and was intended to take the place of the emergency rule that has been in effect since June 29, 2017. The District received public comments regarding the language of the proposed rule, which is the expression of the technical information underlying the minimum flow and the process undertaken by the District to assess compliance with the minimum flow. As a result, District staff developed revised proposed rule language that provides additional details about the minimum flow and the status assessment process to more fully explain and clarify the process. The revised proposed rule language is attached to this recap as an Exhibit A, and the rule language previously approved by the Governing Board in June 2017 is attached as Exhibit B.

Upon Governing Board approval of the revised proposed rule language, District staff will proceed with formal rulemaking without further Board action. If substantive changes are necessary, this matter will be brought back to the Governing Board for consideration.

Staff Recommendation: See Exhibits

(1) Approve modification of proposed rule language to amend Rule 40D-8.041, Florida Administrative Code, to establish a minimum flow for the Rainbow River System; and,

(2) Authorize District staff to make any necessary clarifying or minor technical changes that may result from the rulemaking process.

Presenter: Christopher A. Tumminia, Deputy General Counsel
(1) through (21) No change.

(22) Minimum Flow for the Rainbow River System.

(a) For purposes of this rule, the Rainbow River System includes the watercourse from the Rainbow Springs Group head springs to the Withlacoochee River, including contributing tributaries, and all named and unnamed springs that discharge to the river.

(b) The Minimum Flow for the Rainbow River System is 95% of the natural flow as measured a long-term average flow of 649 cubic feet per second ("cfs") at the United States Geological Survey Rainbow River at Dunnellon, FL Gage ("United States Geological Survey Gage No. 02313100"). Natural flow is defined for the purpose of this rule as the flow that would exist in the absence of water withdrawal impacts. The Minimum Flow is based on a 5% reduction from the natural long-term average flow of 683 cubic feet per second, which was adjusted for groundwater withdrawals using hydrologic modeling for the period of record from 1965-2015 at the United States Geological Survey Rainbow River at Dunnellon, FL Gage No. 02313100.

(c) Status assessments of the Minimum Flow for the Rainbow River System will be completed to determine whether the long-term average flow is below or projected to fall below the Minimum Flow criteria adopted in this section. Each status assessment is independent from and not a determination of water use permit compliance or environmental resource permit compliance. Permit compliance is a regulatory function that is not within the scope of this subsection. As part of each status assessment, the District will use the following approach:

1. The District will evaluate the Minimum Flow annually to determine the extent to which the long-term average flow of the Rainbow River System has been reduced due to withdrawals as of the period of record from 1965 to the date of each status assessment at the United States Geological Survey Rainbow River at Dunnellon, FL Gage No. 02313100. The annual evaluation will be completed through a review of:

   (a) flow data;
   (b) water withdrawals;
   (c) aquifer water levels;
   (d) rainfall data; and
   (e) hydrologic modeling.

2. The District will also evaluate the Minimum Flow every five years as part of the regional water supply planning process. This evaluation will include the use of hydrologic modeling.

3. If the Minimum Flow is being met based on the annual evaluation or the evaluation performed as a part of the regional water supply planning process, long-term average flows adjusted for withdrawals, then no further actions are required beyond continued monitoring.

4. If the annual evaluation indicates the long-term average flow is below the Minimum Flow, or if the long-term average flow is projected to fall below the Minimum Flow within 20 years based on the evaluation performed as a part of the regional water supply planning process, the District will conduct a causation analysis to evaluate the potential causes of impacts on the Rainbow River System.

Revised proposed rule language 03-26-19
5. Based on the causation analysis, the District will re-evaluate the Minimum Flow for the Rainbow River System, or adopt a recovery or prevention strategy consistent with the provisions of Section 373.0421(2), F.S.

(d) The District will re-evaluate the Minimum Flow by December 2027, within ten years of adoption of this rule.

Rulemaking Authority 373.044, 373.113, 373.171 FS. Law Implemented 373.036, 373.042, 373.0421 FS. History—New 10-5-74, Amended 12-31-74, Formerly 16J-0.15, 40D-1.601, Amended 10-1-84, 8-7-00, 2-6-06, 4-6-06, 1-1-07, 11-25-07, 2-18-08, 3-2-08, 5-12-08, 5-10-09, 3-23-10, 3-28-10, 7-12-10, 8-2-10 (8), 8-2-10 (15), 10-16-12, 3-20-13(16), 3-20-13(17), 6-20-16, 3-15-18, 6-19-18. ___.

Revised proposed rule language 03-26-19
(1) through (21) No change.

(22) Minimum Flow for the Rainbow River System.

(a) For purposes of this rule, the Rainbow River System includes the watercourse from the Rainbow Springs Group headsprings to the Withlacoochee River, including contributing tributaries, and all named and unnamed springs that discharge to the river.


(c) Status assessments of the Minimum Flow for the Rainbow River System will be completed to determine whether the long-term average flow is below or projected to fall below the criteria adopted in this section. Each status assessment is independent from and not a determination of water use permit compliance or environmental resource permit compliance. Permit compliance is a regulatory function that is not within the scope of this subsection. As part of each status assessment, the District will use the following approach:

1. The District will evaluate the Minimum Flow annually to determine the extent to which the long-term average flow of the Rainbow River System has been reduced due to withdrawals for the period of record from 1965 to the date of each status assessment at the United States Geological Survey Gage No. 02313100.

2. The District will also evaluate the Minimum Flow every five years as part of the regional water supply planning process.

3. If the Minimum Flow is being met based on long-term average flows adjusted for withdrawals, then no further actions are required beyond continued monitoring.

4. If the long-term average flow is below the Minimum Flow, or if the long-term average flow is projected to fall below the Minimum Flow within 20 years based on the evaluation performed as part of the regional water supply planning process, the District will conduct a causation analysis to evaluate the potential causes of impacts on the Rainbow River System.

5. Based on the causation analysis, the District will re-evaluate the Minimum Flow for the Rainbow River System, or adopt a recovery or prevention strategy consistent with the provisions of Section 373.0421(2), F.S.

(d) The District will re-evaluate the Minimum Flow within ten years of adoption of this rule.

Rulemaking Authority 373.044, 373.113, 373.171 FS. Law Implemented 373.036, 373.042, 373.0421 FS. History—New 10-5-74, Amended 12-31-74, Formerly 16J-0.15, 40D-1.601, Amended 10-1-84, 8-7-00, 2-6-06, 4-6-06, 1-1-07, 11-25-07, 2-18-08, 3-2-08, 5-12-08, 5-10-09, 3-23-10, 3-28-10, 7-12-10, 8-2-10 (8), 8-2-10 (15), 10-16-12, 3-20-13(16), 3-20-13(17), 6-20-16, 3-15-18, 6-19-18, ___.

Rule language approved 06-27-17