

FLORIDA WATER COALITION, INC.

Florida Wildlife Federation ❖ Florida PIRG ❖ Legal Environmental Assistance Foundation ❖ 1000 Friends of Florida ❖ Defenders of Wildlife Audubon of Florida ❖ Clean Water Network ❖ Earthjustice ❖ Florida Conservation Alliance Institute ❖

Water Management Position Paper

Water Policy for Protecting Nature, Not Promoting Growth

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Water Policy for Protecting Nature, Not Promoting Growth

New projections for Florida's growth and water supply shortages have many people looking at the fundamentals of Florida's water policies. From the development side of the debate will come demands for state guarantees of water for millions of newcomers. From industry and agriculture water users comes the view that their uses should be given special treatment. The interest of environmental and recreational users of the water found in Florida's natural systems depends on a few assurances in state laws and rules, and those are hard to uphold against economic pressure.

Florida needs a more aggressive approach to protecting and restoring the environment from future and current water supply demands. The state water plan, already out of date, is more about managing human needs and impacts than an attempt to safeguard the resource. Its subtext for nature is minimum level of protection, maximum acceptable damage.

There is an alternative approach. Make protecting Florida's water resources the first priority. Then allocate water supply for human consumption and health, agriculture, industry, non-farm irrigation and other uses in that order.

The state, water management districts and local governments, and the use and financing of conservation, treatment and alternatives. In doing so the FWC anticipates some of the major issues within the water policy debate and anticipates proposals by those who make water supply for new growth the goal of Florida water policy.

I. Role of Water Management Districts, State and Local Governments

Water is a public resource. Who should manage it for the public's benefit?

A basic and unalterable principle is that water resources belong to the people of the state and must be guarded for the benefit all citizens and for the benefit of the fish and wildlife that share our dependence on water. This guardianship role extends to the future and is not just a role of dividing the spoils on a first come, first served or highest bidder basis as in some other states.

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Nevertheless, water is vital for economic activity and Florida law generously allows water to those who demonstrate a reasonable and beneficial use. That right is limited only by not interfering with existing uses and conditioned by the idea of public interest. The right to take water is temporary and permitted by water management districts, which have rules based in law that are intended to keep any one permit or cumulative permits from harming the resource.

The Best Role of Water Management Districts is Resource Protection

The five water management districts emerged in part from drainage districts when the Florida's current water laws were drafted. They enjoy special power under the State Constitution to collect property taxes to support their mission. That mission was once focused on managing the resource and permitting water uses. The districts manage large amounts of land to protect floodplains and aquifer recharge. Water management districts are at their best with resource protection. Success can be measured through buying and protecting swamps such as the Suwannee floodplain and headwaters, restoring habitat such as the Everglades, or cleaning up polluted waterways by reflooding muck farms as with the Lake Apopka project.

Should Water Management Districts Shoulder Water Supply Responsibilities?

Recently, the Legislature moved water supply higher on to the districts' to-do list. Legislators viewed the districts property tax collections as an easy source of funds for water supply development. There is now tension within some districts between their traditional role of managing water resources and the new role of planning for and helping to finance supply for growth.

Job Number One for Districts is to Protect Water Resources

Directed by state policy, using local, state, private and federal funds, the water districts should continue their focus on protecting and restoring Florida's natural water resources - spring by spring, swamp by swamp. This job, accomplished through land acquisition, mitigation, restoration projects and regulation should occupy the foremost attention of the districts and their citizen governing boards.

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State Oversight for Protecting Water Resources

Both the Legislature and the Governor give policy and budget direction to the districts. The job of overseeing the protection and use of Florida's water resources is and should continue to be shared by the Legislature, the Department of Environmental Protection and in the context of public ownership of land and water and for the purpose of appealing water management district rules and decisions, by the Cabinet. Florida water policy creates a balance between use and resource protection.

A Stronger Role for the Cabinet in Reviewing Water Resource Decisions

Florida's water resources require vigilant stewardship at the highest levels of government. The Governor and Cabinet also sit as the Trustees of the Internal Improvement Trust Fund, the Land and Water Adjudicatory Commission and the Board of Administration. In these complementary roles, the Cabinet serves as the highest level of state resource protection and as an appellate body for rules and agency decisions affecting the state's land and water resources.

Major permits should be subject to review by the Governor and Cabinet. As water permitting becomes more critical in many areas of the state, the temptation to escalate the political nature of this process will grow. Governor and Cabinet review will add an important level of public scrutiny and debate. Currently citizens may have an opportunity to challenge a permit under Chapter 120. However, in recent years citizens' access to even this very expensive and often very politicized legal forum has been severely curtailed by the Legislature. A permit review before the Governor and Cabinet is a more citizen friendly environment where elected officials (versus political appointees) make decisions in full view of their constituents.

An additional new role for the Cabinet should be review and approval of water resource protection plans. This review authority, similar or comparable to review of uses of public lands would allow an appellate process for water management district efforts to manage water resources. A review could be initiated by petition of an affected party.

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II. Water Management District Governing Boards are Good Citizen Government

Florida's unique approach to managing its water resources through water management districts governed by appointed citizens has proven worth. The current role of water districts and their governing boards should not only be retained, but strengthened. The unequal taxing authority among the districts is in need of urgent reform.

Northwest Florida Water Management District Budget Limits Resource Protection

The amendment to Florida's Constitution that established the water management district's power to levy property taxes capped the Northwest District at .05 mills or 1/20th of the amount for other districts. This unequal funding has led to unequal protection. The Northwest District covers one-fifth of Florida, most of our interstate rivers and some of the state's most biologically important estuaries. Northwest legislators refuse to face this problem, which may have to be handled by citizen initiative.

Do More to Diversify Appointments and Seek Best Possible Board Members

Governing boards could be improved by a more concerted effort to recruit citizens with a proven commitment to resource protection. While many appointments reflect certain expertise and valuable business experience from certain segments, there should be more balance with citizens who have a strong interest in protecting Florida's nature based economy.

Improve Public Confidence More Accountability and Disclosure

Water district managers may be subject to troubling attempts to influence their decisions on permits and policy. This was recently reflected in the South Florida District's disturbing decision to embrace a sugar industry plan to postpone Everglades pollution cleanup. More aggressive disclosure of business relationships and gifts along with enforcement of sunshine laws could improve accountability and public confidence.

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More Public Input to Decisions

As with other areas of government, water districts could place a higher premium on citizen participation. The Southwest district does this best and could be looked at as model for making sure that the public understands pending issues and has the opportunity to provide input.

III. Growth and Water Supply

Promoting water supply promotes new population growth

News reports about the Council of 100 report on water supply suggest that the report concludes that the state has an obligation to make plans for abundant water supply to support unsustainable population projections. The Council of 100's water task force asserts that developers have a right to "certainty" that the state will provide unlimited new water supplies for future growth. This is not a current state responsibility and should not be. The dollar cost and the environmental costs attached to this demand are enormous. The taxpayers of Florida have a right to know in advance what would be traded in terms of money and environmental degradation. The pretense that growth will occur regardless of controls and that the people of Florida are helpless to control the destiny of their state is not rooted in democratic principles. A state water plan based on promotion of uncontrolled growth in Florida is not a plan at all - it is a manifesto for destruction.

Allocating Existing Available Use is a Local Challenge

Nearly all Florida communities were settled with an eye toward available water. The same goes for industry and agriculture. Water supply has always been considered a local and limiting resource. With the exception of the Florida Keys, people have made do with local sources.

Local government has a responsibility to make wise land use decisions that are consistent with proper water protection, recharge, use and treatment. Although local governments don't control water resources, they make decisions that should be consistent with protection of surface and groundwater and limits on over-consumption.

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A sustainable approach would be to allocate water for consumptive use only after water resources are protected and there is a predictable amount of surplus water. This water should be allocated in such a way as to accommodate predicted new growth. For example a city may need 15 million gallons a day to accommodate 100,000 people (assume 150 gallons per day per person). If the city plans to double in size, it should also plan to reuse and conserve enough water to make its allocation accommodate the growth. Making do with available water is a local job.

Water Management Districts Should Set Limits on Use and Stay Away from Supply

Water management districts have recently been given a more profound role in assisting with water supply development. This ~~is~~ should be reversed. Regional water availability assessments allow water districts agree to permit a certain amount of water in an area based on availability. Local governments can then construct policies to allow growth within the limits or pay to generate more water without harming the resource.

There is Limited Role for the State in Promoting and Planning for Supply

Growth promotion mines the local infrastructure, which in the case of land and water is a limited resource. The State's job is to coordinate protection of state resources such as water and wildlife and ensure public safety and welfare and education. *The state's role is not to help take from one area what has been squandered by another.*

Giving the State a role in water supply can only be predicated on the idea of conflicts over water supply. These conflicts only come about as result of attempts to use more than is locally available. The State's role is not promoting supply, but enforcing resource protection even if it has to use the words "No More!" The Council of 100's reported recommendation to create a statewide water board that would be tasked with putting water supply on an equal footing with environmental protection would take away local control of water resources and undermine those local officials that have planned for a less extractive and more sustainable economy.

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Smart Water Plans Avoid Growth Related Conflicts through Demand Management

Water supply is primarily the responsibility of local governments. Some local governments manage water deliveries as a way to supplement municipal budgets. Charging on a per gallon basis, they collect more money if more water is used. The hidden profit helps lower other taxes. A smarter approach for local governments and utilities is to manage demand and growth rather than shaving off funds to subsidize their tax base.

Alternative Supplies and Conservation are Water Supply Demand Solutions

Local governments and utilities can use their rate base and their comprehensive plans to create and finance solutions to new water supply demand:

1. Reuse of reclaimed wastewater for uses other than domestic consumption is one obvious solution. It is the most immediate and abundant new source of water in the state. Strict health and safety controls are important to make sure that treated wastewater does not expose people to harmful levels of disease causing pathogens or toxic chemicals. Local governments can also return reclaimed water to nature; however putting wastewater into wetlands and spray fields has become a new source of pollution.
2. Conservation is another way of dealing with supply demands. Even minimum efforts at leak control, appliance replacement and efficient irrigation and drought resistant landscaping can save large quantities of water.
3. Smart growth directs redevelopment of existing areas. As new residents occupy less land, the per capita use of water is reduced.

Supply Comes after Resources are Protected

After water resources are inventoried and protected, water supplies should be permitted according to the legal tests of reasonable and beneficial use, existing use and public benefit. If users get first claim to water, it is very hard to ensure that the resource will be protected. If the resource is stressed to make up for water that has been permitted away, than the resource will be harmed, in some cases permanently.

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IV. Water Resources are Florida's Primary Environmental Resources

Florida is unique in the way water is the most defining of natural resources. Our springs, rivers, floodplains, lakes, prairies, wetlands and estuaries are defining features and in many cases unique habitats and special places. The same is true of our uplands, which through recharge and drainage shape our waterways. Uplands harbor many of Florida's most rare and interesting plants and animals.

Special Places are Fundamental to Florida's Nature-Based Economy

Before theme parks dominated tourism, most people visited Florida to enjoy its remarkable natural beauty, to fish and hunt, to watch wildlife, to swim, boat, take scenic tours, see tropical forests, paint, photograph, garden or relax. People sought Florida as a retreat and an adventure. This nature-based economic activity, while surpassed now by residential development is still very important to many businesses, investors and workers. Natural Florida will always have more customers than golf courses. Our nature-based economy is sustainable and generates billions of dollars.

Golf course communities are just another way of strip-mining the landscape. Studies show that house buyers along those golf courses usually are seeking the open, green space adjacent to their homes, not the sport. When developers leave the golf course behind, the money follows, while the landscape remains destroyed. Florida's nature based economy is fully dependent on protection of water resources. If water is diverted, overdrawn, polluted, drained or otherwise taken from the natural system, it is lost to supporting the fishing and other recreational activities noted above. One sustainable and fruitful economy is sacrificed for another, which is costly and wasteful. While water can be permitted for a golf course community, a permit cannot be issued for redbird, monarch butterfly migrations, drifting down a river in a tube, or nesting wood storks - all of which people travel to Florida to enjoy.

Florida's nature-based economy is enhanced and placed in perspective with the growth based economy by considering and avoiding impacts to water resources in state planning decisions, including subsidies for new growth.

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Water Resources are Critical to Healthy Habitats

Florida has 87 natural community types, some quite rare. More than any other state. Every one of them, from the Everglades to bayheads, is dependent on water resources. Without the natural cycle of water and seasonal fluctuations of rainfall as well as episodes of drought and fire and flood, these natural communities cannot continue. They become overgrown and invaded or subject to wildfires. The pollinators and seed spreaders fail to show up. The communities, once home to hundreds of rare plants and water dependent wildlife from bears to bugs, interdependent on each other and Florida natural water cycles give way to less diverse communities that are less stable, less interesting and often dominated by nonnative species.

Water Resources are Critical to Most Wildlife Species

As with our natural communities, Florida's wildlife has evolved with a special relationship to water and the wetland - upland interface. Remove the water, or change the way the water flows or pools, and the conditions required for these species change. The result is a decline in abundance and diversity, a world tending toward a monoculture and disappearance of the wildlife that aesthetically make Florida special. Disappearing also are the isolated, intermittent wetlands that produce insects eaten by amphibians eaten by spectacular wading birds watched by Florida tourists. Disappearing are the coastal mangroves and marshes providing nurseries for the young fish feeding upon the crustaceans, zoo- and phyto-plankton of our estuaries, and ultimately caught and consumed by the people who look to Florida's productive waters for food and recreation.

V. Resource Protection Looks Beyond Minimum Flows and Levels

When Florida's current water policy was conceived, insufficient attention was paid to the challenge of protecting the resource. At the time, biological inventories were not complete and public consensus on the importance of Florida's natural history had not matured. The early idea of setting minimum flows and levels (MFLs) to protect nature is now in the early stages of implementation and has proved insufficient to protect Florida's special places. Beyond MFL's and the science of "how little water a resource needs" is the question of how to protect the resource for resilience and for the health of the natural communities that depend on

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it. Resource protection looks at how to keep water within a system, how to retain or restore functional natural recharge and drainage.

Minimum Flows and Levels are Insufficient Measures of Harm to Water

Minimum Flows and Levels (MFLs) are the defined mechanism for protecting the State's water resources. Minimums though have been twisted to allow significant harm. This tool was not even used until environmental litigation forced the issue. Then the Legislature grudgingly provided additional direction and limits. Now MFLs are scheduled by rule and are being set for many water bodies. However the state is moving slowly with even this very minimal effort to protect Florida's unique water-dependent resources. It appears that minimum protection equals maximum supply.

The responses to significant harm when recognized are "recovery and prevention. Yet these are vague strategies that might take place if during the setting of an MFL it is predicted that in twenty years the resource is harmed. Clearly, late arriving MFLs are not preventive and by themselves have no power limit harm to the resource.

Setting an MFL Does Not Protect the Resource

Resource protection is based on knowing the truly protective cycle of water within the system around a water body. An MFL may predict that a spring flow is sufficient to avoid significant harm to fish in a stream, but it does not necessarily look at the problems of recharge and overuse within the system of water resources from which the spring's water flows. MFLs are sometimes set not according to what is protective of the water body, but what can be achieved without putting much pressure on users and development.

Once Permits are Issued and Recharge and Drainage are Altered, Recovery is Difficult and Prevention is Precluded

Drainage, dehydration, runoff from developed areas steal water from natural systems. Once the water is diverted, it takes massive investment to channel it back into water bodies. Everglades restoration provides a stunning, if large-scale example of the difficulty of getting water back into the system. South Florida's

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water management mistakes are being repeated all over the state - often coupled with economic promotion.

Water Should be Reserved for Natural Systems (Fish and Wildlife)

Florida water policy has a provision - 373.322(4) F.S that declares:

The governing board or the department, by regulation, may reserve from use by permit applicants, water in such locations and quantities, and for such seasons of the year, as in its judgment may be required for the protection of fish and wildlife or the public health and safety. Such reservations shall be subject to periodic review and revision in the light of changed conditions. However, all presently existing legal uses of water shall be protected so long as such use is not contrary to the public interest.

This concept is now essential for Everglades restoration where advocates are concerned that recovery plans will yield water that will be permitted away before being delivered to the natural system. Reserving water from permitted use is a tool that could be used to great advantage for natural systems in other parts of the state.

Districts Should Inventory Areas of High Natural System Value to Determine Water Needs

Priority should be given to protecting Florida's remaining natural areas and recovering those that have important wildlife or collections of plants and animals. These areas deserve a reservation of water that would prevent loss of existing water point and support recovery of lost sources. Working with state and local agencies including the Fish and Wildlife Conservation Committee and land managers and planners, districts should reserve water resources from the impacts of development in areas of compelling state interest.

Districts Should Set Priority Lists and Schedules for Reserving Water for Fish and Wildlife

Just as the water management districts have priority lists for MFLs, the State should establish a priority list for areas to reserve water for fish and wildlife. At the end of a planning horizon, say 20 years, all biologically and recreationally significant waters could be reserved from permitting.

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VI. Environmental Resources Need Stronger Protection

Recharge and Drainage are Vital Protection Strategies and Need Stricter Rules

The State's current rules on surface water and storm water management are insufficient to maintain the recharge of natural systems. Water should not be drained off land at rates faster than it would normally flow. New development should accommodate, or if on drained farmland, restore, slow seepage of rainwater into the ground or into wetlands, lakes and streams. Existing developments should retrofit to capture, treat and use runoff to recharge and rehydrate water resources.

Wetlands, Lakes, Rivers, Springs and Estuaries Should be Functionally Protected

The State's water resources are necessary components of living systems. Florida's protection strategies should be aimed at delivering water in the seasonal and cyclic ways that mimic natural systems.

VII. Clean Water Requires Strong State Standards and Effective Local Action

Florida's current rules and laws to prevent degradation of surface and ground water are not succeeding against ever increasing human impacts on water resources. We need tough laws at the top and aggressive compliance and implementation of prevention and cleanup strategies locally. This change in attitude and action by the state becomes even more critically needed as our state receives 250,000 new residents every year. Each new Floridian brings with them increased demands for sewage treatment and disposal, potable water and more roads. They will plant more lawns, need more gas stations, bring more pets, need more malls for shopping and the list goes on and on. Each of these needs and outcomes brings more pollution to ground water and surface waters and hence a greater need for protection. We cannot contemplate creating billions of gallons of new water for millions of new residents without planning for the pollution that will surely follow.

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Environmental Resource Permits Should Control More Pollution and Runoff

Florida's combined permitting system for storm water, surface water management and wetlands is not up to the job of preventing further degradation of water resources. Few water bodies are getting cleaner and most are experiencing ever higher levels of pollution. State and federal law prohibits this ongoing degradation of our surface waters, yet both levels of bureaucracy lack the political will to enforce our laws. In fact, Florida is playing a leading role nationally through its efforts to undermine federal Clean Water Act protections. Floridians are in grave danger of losing the basic protections and rights that every American is now entitled to under the Clean Water Act.

The Environmental Resource Permit (ERP) was created by legislation in 1994 and implemented by rulemaking that was unsuccessfully challenged by many of the state's largest businesses. The primary focus of the ERP legislation was to streamline the state's permitting programs, principally by combining the wetland resource permit and the management and storage of surface waters permitting programs. While the streamlining goal of reducing two permitting programs into one has been achieved, little overview has occurred to determine if the ERP program meets the state's needs of resource protection and many examples exist to indicate it is not serving adequately. After ten years of streamlining, it's time to revisit the ERP to determine if we are protecting the streams.

The ERP should require all applicants to demonstrate that all reasonable efforts have been made to avoid impacts to the state's water resources. The present avoidance provisions are vague and riddled with exceptions. The ERP should require consideration of both direct and indirect impacts to the state's water resources. The present ERP provisions for examining cumulative and secondary impacts of development are narrow and based upon political criteria rather than upon science and the workings of natural systems. The present ERP leaves the regulator with few tools to reject development. Instead the ERP has become a program by which one is entitled to a permit so long as the applicant is willing to offer mitigation. The regulator should be given the tools to be able to say no to bad development. Mitigation today can take many forms, including the donation of money, preservation of wetlands that are not to be developed in the first place, and creation of wetlands that have a poor track record of success. Where mitigation is appropriate, the mitigation must be real and ensure that the state's wetland resources are not being reduced.

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Stormwater Rules Control Sediment, Not Nutrients and Chemical Pollution

Stormwater usually contains nutrient, chemical and heavy metal pollution. The current required technology for stormwater is not designed to treat pollutants. While Florida is one of a handful of states that makes *any* attempt to control stormwater run-off, current efforts are largely aimed at new development and are inadequate even for that. Polluted stormwater is allowed to surge into our creeks, lakes and estuaries and there is no requirement that water quality standards be met. Even in the face of the importance of clean water to Florida's economy, the state is working to minimize protections against polluted run-off.

Little Emphasis Is Placed On Maintaining Recharge and Natural Drainage Characteristics Of Landscape

Rules for controlling stormwater direct developers toward highly and often large artificial retention and detention techniques that do not work very well. It is a waste of money, land and opportunity. New rules emphasizing natural recharge and drainage would do more to reduce the impact of new land uses. The least expensive and most effective way to minimize the stormwater problem is to stop the destruction of wetlands in Florida. Neither the state or federal government are effectively protecting wetlands. In fact, current proposals by the federal government would remove vast acreage of wetlands from any protection at all. Nature's recharge and drainage areas also provide flood protection, wildlife habitat and water purification. Watershed protection will be very seriously undermined by federal proposals to change the definition of wetlands in such a way as to remove legal protection for millions of acres in the US and Florida.

Infrastructure for New Growth Should be Secondary to Investment in Current Cleanup Needs

Florida and many communities invest funds in accommodating new growth, which really means promoting new growth. This creates competition for funds to correct the pollution problems created by previous growth. Florida communities have a multi-billion dollar backlog of water pollution treatment needs that cannot be ignored if we protect our already stressed water resources.

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Many Segments of Impaired (polluted) Waters

Florida has over 700 segments of lakes, rivers and estuaries that are too polluted for their designated uses, such as drinking, fishing and swimming. This list grows daily and the state has chosen to address this problem by changing the definition of pollution and trying to take hundreds of these polluted waters off the clean-up list. So far the federal government has tried to hold the line against the state's efforts, but federal laws are threatened too as the White House prepares to relax federal clean water laws as well.

Few Programs are in Place to Clean Up Current Sources of Pollution

In spite of the long list of polluted waters, Florida has only a minimal system for funding cleanup. Money comes from a small federal revolving loan program and from local utilities. Any of the polluted waters that Florida removes from its clean-up list, become ineligible for the federal funds that are available, which further exacerbates the clean-up funding problem.

VIII. Conclusion

Putting Florida's environment on par with growth requires an aggressive plan of action.

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