

Handbook of Florida Water Regulation: Consumptive Use¹

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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decisions on which this handbook is based are subject to constant revision, portions of this publication could become outdated at any time.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.

Who Regulates Consumptive Use?

Both the Florida Department of Environmental Protection (FDEP) and the Florida water management districts' (FWMDs) governing boards, which are charged with maintaining the state's reserves of usable water at an acceptable level, are vested with the authority to require consumptive use permits and impose conditions on those permits. This is in accordance with Florida's water use policy, which gives preference to desirable uses to promote human, natural resource, fish, and wildlife preservation. This authority is delegated almost entirely to the FWMDs, which should be consulted before any consumptive use of water is undertaken (see FE616, Contact Agencies)..

What Permits Are Required for Consumptive Use?

When a party's water usage reaches any of certain pre-determined threshold levels, the appropriate FWMD will require a permit. Threshold levels are determined by the individual FWMDs; it is important to consult the appropriate FWMD regarding this threshold. Two types of permits, individual and general, are relevant to water consumption as follows:

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1. *Individual permits* are required when withdrawal exceeds established daily limits that are measured in gallons per day
2. *General permits* apply where the amount of the withdrawal will be minimal as set forth in the rules of the various FWMDs

All uses must be permitted unless exempted, including existing uses. This means there are no special exemptions for withdrawals from ground or surface waters that were in existence before the consumptive permitting requirements became effective.

Exemptions generally include the following:

- Individual residential consumption
- Wells for testing or monitoring water quality
- Private, shallow wells
- Certain heating and cooling systems
- Dewatering activities necessary for construction if they are completed in less than six months

The statutory exemption, however, does not absolve farmers who are making residential use of water from observing common law duties (see [FE598](#), Private Regulation, for examples). Generally, this means that the use of the water supply must be reasonable. Several factors may be used by the courts to determine the “reasonableness” of the use, including:

- The purpose of the use
- The suitability of the body of water
- The relative economic and social values
- The degree of harm to the environment
- The practicality of avoiding the harm or the practicality of adjusting the quantity of the usage

What Kind of Water Is Permitted for Consumptive Use?

For the most part, the water permitted for consumptive use is groundwater. In Florida, reclaimed water provided by domestic wastewater treatment plants is also considered safe (Chapter 373, Florida Statutes, Section 373.250) and is

permitted by the FWMDS to promote and encourage water conservation. Contact your local FWMD to find out more about reclaimed water for consumptive use.

What Are the Effects of Consumptive Use Permits?

Permits are only granted for fixed periods of time according to the reasonable assurances of the applicant that the conditions will not deteriorate. Except for public and renewable energy facilities, they may not exceed twenty years and are usually granted for much shorter periods. When the nature of a proposed use is such that the permit application process may be lengthy, the appropriate FWMD may issue a temporary permit. Transfer of permits between activities identical in nature at the same location is usually allowed and conditions of the permit usually remain the same. There are different requirements for individual and general water permits.

When Is a Consumptive Use Permit Revoked?

Any failure to continually observe the terms provided by a consumptive use permit may result in its revocation. Other grounds for revocation may include nonuse of the permitted area or facility for a statutorily defined period of time (two years or more for most uses, four years or more for renewable energy uses) or unsatisfactory mitigation (reduction or lessening) of environmental damage from the use.

Source

Chapter 373, Florida Statutes, Sections 373.203 to 373.250

Title 40, Florida Administrative Code (individual FWMD rules)

Contact Information

Consumptive Use (see [FE616](#), Contact Agencies)

- S-1, Florida Water Management Districts

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