

SUWANNEE RIVER WATER MANAGEMENT DISTRICT

MEMORANDUM

TO: Governing Board

FROM: George T. Reeves, Governing Board Legal Counsel

DATE: May 10, 2021

RE: Memorandum of Understanding with the St. Johns Water Management District allowing each District to include its Recovery and/or Prevention Strategies as Part of the North Florida Regional Water Supply Plan

RECOMMENDATION

Approve the proposed Memorandum of Understanding, a copy of which is enclosed herewith.

BACKGROUND

The Memorandum of Understanding (MOU) is to address an issue which has arisen concerning St. Johns' MFLs and recovery strategies for its Lake Brooklyn and Lake Geneva MFLs. These recovery strategies are going to be considered by the St. Johns Governing Board at its May 11, 2021 meeting. The St. Johns Governing Board is also considering this MOU at its May 11, 2021 meeting.

An issue has arisen concerning the adoption of the recovery strategies for these MFLs. Florida law provides:

If, at the time a minimum flow or minimum water level is initially established for a water body pursuant to s. 373.042 or is revised, the existing flow or water level in the water body is below, or is projected to fall within 20 years below, the applicable minimum flow or minimum water level, the department or governing board, as part of the regional water supply plan described in s. 373.709, shall concurrently adopt or modify and implement a recovery or prevention strategy.

Section 373.0421(2), Florida Statutes (Emphasis supplied).

Therefore, the recovery or prevention strategy must be adopted "concurrently" with the adoption of the MFL. The recovery or prevention strategy must also be "part of the regional water supply plan." Ordinarily, a water management District would adopt (1) an MFL, (2) if necessary, its recovery or prevention strategy, and (3) make the recovery or prevention strategy part of its applicable water supply plan, "concurrently."

The issue that has arisen is that the regional water supply plan which is applicable to the area of St. Johns MFLs for Lake Brooklyn and Lake Geneva, is part of the North Florida Regional Water Supply Plan (2015 -2035) which was jointly approved by the St. Johns District and the Suwannee District in 2017.

As the North Florida Regional Water Supply Plan was adopted by the two Districts jointly, the question is whether the concurrence of both Districts is required to make a single District's recovery or prevention strategies part of the North Florida Regional Water Supply Plan.

To answer this question, the general counsel for the St. Johns District and I (in consultation with the Executive Director) prepared the attached MOU for consideration by the governing board. In the MOU, the Districts agree that each District may unilaterally make its recovery or prevention strategies part of the North Florida Regional Water Supply Plan. The parties also agree that the other District (including the water users in the other District) will not be bound by such recovery or prevention strategy unless and until it is approved by the other District's governing board.

The St. Johns District can go ahead and make its recovery or prevention strategies for the Lake Brooklyn and Lake Geneva MFLs part of the North Florida Regional Water Supply Plan, but the Suwannee District (and its water users) will not be bound by such recovery or prevention strategy unless our governing board approves it.

The reverse would apply for the Suwannee District's upcoming MFLs. If such MFLs require recovery or prevention strategies, we would be able to make our recovery or prevention strategies part of the North Florida Regional Water Supply Plan, but such strategies would not bind the St. Johns District or its water users unless their governing board approved them.

This MOU would not affect the pending Lower Santa Fe / Ichetucknee MFL, as that MFL and recovery or prevention strategies are to be adopted by FDEP.

TR/rl
Attachment

**MEMORANDUM OF UNDERSTANDING BETWEEN
ST. JOHNS RIVER WATER MANAGEMENT DISTRICT AND
SUWANNEE RIVER WATER MANAGEMENT DISTRICT**

The St. Johns River Water Management District (SJRWMD) and the Suwannee River Water Management District (SRWMD), collectively referred to as the “Districts,” enter into this Memorandum of Understanding (MOU) to accomplish the goals and purposes stated below.

WHEREAS, the Districts are legislatively created regional agencies of the state with abutting geographical boundaries; and

WHEREAS, the Districts each have existing programs to assess hydrologic conditions, to plan for future water supply needs, to regulate consumptive uses of water, and to declare water shortages within their boundaries; and

WHEREAS, in January 2017, the Districts jointly approved the North Florida Regional Water Supply Plan (2015 -2035) (the “NFRWSP”) recognizing that each District’s authority for water supply planning extends to water supply planning regions within each District’s jurisdictional boundaries as established in section 373.069, Florida Statutes; and

WHEREAS, the Districts are required, pursuant to section 373.042, Florida Statutes, to adopt minimum flows or minimum water levels (MFLs) to prevent significant harm to the water resources from water withdrawals; and

WHEREAS, if at the time an MFL is adopted the existing flow or water level in the water body is below, or is projected to fall within 20 years below, the applicable MFL, the Districts must develop and implement a recovery or prevention strategy as required by section 373.0421(2), Florida Statutes; and

WHEREAS, section 373.709, Florida Statutes provides that “[e]ach regional water supply plan must ... include, but need not be limited to: ... (c) The recovery and prevention strategy described in s. 373.0421(2).”

WHEREAS, the Districts have determined that it may become necessary to amend the NFRWSP to add recovery and prevention strategies as they are developed.

NOW THEREFORE, the Districts agree as follows:

1. Each District is authorized to unilaterally make its adopted or modified and implemented recovery or prevention strategies part of the NFRWSP as provided in Section 373.0421(2), Florida Statutes. However, notwithstanding anything else herein to the contrary, no recovery or prevention strategy which is made a part of the NFRWSP pursuant to this MOU or otherwise, shall be binding upon or applicable to a District (including the water users located within the District’s boundaries), without that District’s governing board’s prior written approval thereof.

2. All recovery or prevention strategies made part of the NFRWSP as provided in this MOU shall be added as a separate appendix (explicitly showing it was unilaterally adopted by the adopting District) to the NFRWSP. The unilaterally acting District shall notify the other District of such action as soon as practical thereafter.

3. This MOU shall apply equally to all actions taken by the Districts both before and after the adoption of this MOU. Therefore, any previous actions of a District which, had this MOU been in effect, would have been proper are hereby ratified as if this MOU had been in effect prior thereto.

4. This MOU may be amended in writing by mutual agreement of the Districts.

5. Either District may terminate its participation in this MOU by providing 60 days' written notice to the other District.

6. Nothing herein shall be construed to conflict with any requirement of Chapter 373, Florida Statutes, or any District rules.

IN WITNESS WHEREOF, each party, or its lawful representative, has executed this Agreement on the date set forth next to their signature below.

ST. JOHNS RIVER WATER MANAGEMENT DISTRICT

By: _____
Douglas Burnett, Chairman

Attest: _____
Susan Dolan, Secretary

Date: _____

(Seal)

SUWANNEE RIVER WATER MANAGEMENT DISTRICT

By: _____
Virginia H. Johns, Chair

Attest: _____
Charles Keith, Secretary

Date: _____

(Seal)