



Florida Department of Environmental Protection

Marjory Stoneman Douglas Building
3900 Commonwealth Boulevard
Tallahassee, Florida 32399-3000

Rick Scott
Governor

Jennifer Carroll
Lt. Governor

Herschel T. Vinyard Jr.
Secretary

TO: George Roberts, Chair, NFWWMD
Douglas E. Barr, Executive Director, NFWWMD
Donald J. Quincey, Jr., Chair, SRWMD
Charlie Houder, Acting Executive Director, SRWMD
Lad Daniels, Chair, SJRWMD
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Paul Senft, Chair, SWFWMD
Blake Guillory, Executive Director, SWFWMD
Joe Collins, Chair, SFWMD
Melissa Meeker, Executive Director, SFWMD

THROUGH: Herschel T. Vinyard Jr. *HV*
Secretary

FROM: Greg Munson *GM*
Deputy Secretary for Water Policy and Ecosystem Restoration

DATE: March 23, 2012

SUBJECT: Guidance for Improved Linkage between Regional Water Supply
Plans and the Consumptive Use Permitting Process

Regional Water Supply Planning is a critical tool for ensuring that existing and future water needs of the state are met while also protecting our valuable natural systems. Regional Water Supply Plans are developed through collaboration among the Water Management Districts (Districts), water providers, water users and other stakeholders when future projected demands are estimated to exceed existing water supplies. The resulting plan provides a blueprint for the development of sustainable water sources by identifying water supply project options, from which local water suppliers can choose, that will be more than sufficient to meet future needs while protecting the water resources of an area.

The Department recently conducted stakeholder sessions around the state with water users and environmental interests seeking input on ways to improve the consistency and effectiveness of the consumptive use permitting program. One of the issues raised



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THROUGH: Herschel T. Vinyard Jr. 
Secretary

FROM: Greg Munson 
Deputy Secretary for Water Policy and Ecosystem Restoration

DATE: March 23, 2012

SUBJECT: Guidance Related to Requests for Additional Information in the
Consumptive Use Permitting Program

Consistent and timely decision-making is essential in the state's water regulatory programs to ensure environmental protection without adversely affecting economic activities. The consumptive use permitting process should promote thorough reviews, clear expectations, and prompt, sound, science-based decisions. The Department recently conducted stakeholder sessions around the state with water users and environmental interests seeking input on ways to improve the consistency and effectiveness of the consumptive use permitting program. Many comments were received related to the need to improve the way that Requests for Additional Information (RAIs) are used and managed in the permitting process.

Requests for Additional Information (RAIs) are used in the consumptive use permitting process to identify for the applicant additional information necessary to complete a permit application. While RAI's are an essential tool in the process, if not properly used and managed, they can become an unnecessary source of frustration for the permit applicant and delay decision-making.

On April 25, 2011, the Districts were provided with the Department's protocol for review and management of RAIs in the Department's regulatory programs (attached). Please ensure that your District has a review protocol in place for the supervisory/management review of RAIs that is at least as stringent as the following:

First RAI - Will require a mandatory review by the permitting supervisor. The RAI can be signed by the permit processor or the permit supervisor.

Second RAI - Must be signed by the applicable regulatory Bureau Chief (or equivalent).

Third RAI - Must be signed by the regulatory Division Director (or equivalent). In addition, a monthly report must be submitted to the Executive Director listing the third RAIs issued and an explanation of why the RAI was issued.

Fourth RAI or more - Shall require the approval of the Executive Director.

The following additional guidance is provided for the use of RAIs in the consumptive use permitting process. RAIs should:

- Clearly describe the information needed;
- Require only information needed to provide reasonable assurance that the permitting criteria are met as provided by statute and rule;
- Not raise new issues not raised in the first RAI or ask new questions not prompted by subsequent submittals by the applicant; and
- Never be used for the purpose of extending the permitting time clock due to workload issues or to delay decision-making by the District.

Careful management of the RAI process allows for timely identification and resolution of issues, and facilitates timely decision-making. The permitting metrics that the Districts are now reporting quarterly will allow tracking, evaluation and continual improvement of this process.

HTV/GM/as

Attachment

cc: Ann B. Shortelle, Ph.D., Director, Office of Water Policy, FDEP



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TO: George Roberts, Chair NFWFMD
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Donald J. Quincey, Jr., Chair SRWMD
David Still, ED SRWMD
W. Leonard Wood, Chair SJRWMD
Kirby B. Green, III, ED SJRWMD
Ronald E. Oakley, Chair SWFWMD
David Moore, ED SWFWMD
Joe Collins, Chair SFWMD
Tommy Strowd, Interim ED SFWMD

FROM:  Melissa L. Meeker, Deputy Secretary for Water Policy and Ecosystem
Projects

DATE: April 25, 2011

SUBJECT: Permitting Information

The Department compiles various permitting statistics in order to analyze permit application trends, agency performance, and budget and staffing needs. The information is essential to quality decision-making.

Two key measures among many are permit application "time in house" and the number of agency requests for additional information (RAIs). The number of RAIs bears some relationship to time in house and both measures may reflect the quality of permit applications and responses to requests for information, the clarity of agency requests, the clarity of our rules, differences in permitting staff experience and expertise, differences in the quality of consultants and agents, etc. Thus, this basic information answers some questions but, more importantly, it raises others that additional data can help answer and lead to better management.

In order to better understand and improve our collective permitting performance, I will be asking you over the next several months to share water management district data similar to that which we are reviewing. As a starting point, please provide the following:

- Number of permit applications received in each of your program areas, by year, for each of the last six full years (2005 – 2010);
- Average and median “time in house” for all permit applications for each year during the same time period, by program area. *“Time in house” means all time from receipt of application to final agency action, including all tolled time.*
- Average number of RAIs each year for the same time period, by program area.
- Number of permit processors (FTE) in each program area during the time period.

In addition to the summary, please also provide the raw data in an Excel spreadsheet or compatible format. You are welcome to share any other permitting metrics you find informative. As I noted, this request is a starting point to initiate an ongoing discussion on improving permitting performance.

The Department has also recently established uniform procedures, including levels of approval, for the issuance of RAIs (attached for your information). We want to promote thorough reviews, clear expectations and prompt, sound decisions. I know you share those objectives as well. Please advise if you have formally established such policies as well and, if so, what they entail.

Please submit your information, electronically, to Kara Nevin (kara.nevin@dep.state.fl.us) no later than May 16, 2011.


cc: Jeff Littlejohn, Deputy Secretary for Regulatory Programs
Kara G. Nevin, Office of Water Policy and Ecosystem Projects

Memorandum

Florida Department of
Environmental Protection

TO: Regulatory Division Directors
Regulatory District Directors

CC: Jeff Littlejohn, P.E.
Deputy Secretary for Regulatory Programs

FROM: Herschel T. Vinyard Jr. 
Secretary

DATE: March 22, 2011

SUBJECT: Policy for Requests for Additional Information (RAI)

To ensure that the Department is reviewing permit applications in a timely fashion, I am establishing a formal policy for the review and management of Requests for Additional Information (RAI) in the permitting process. I understand that the regulatory divisions and districts currently have management review procedures in place, and this new regulatory-wide policy will be more rigorous and will ensure consistency across the divisions and district offices.

Effective immediately, the following policy will apply to RAIs:

1st RAI – Will require a mandatory review by the permitting supervisor. The RAI can be signed by the permit processor or the permitting supervisor.

2nd RAI – Must be signed by the program administrator.

3rd RAI -- Must be signed by the district director (districts) or bureau chief (divisions). In addition, each district and division must submit a monthly report through the Deputy Secretary for Regulatory Programs of the 3rd RAIs issued and an explanation of why the RAI was issued.

4th RAI or more – Will require my approval prior to issuing the 4th or more RAI.

In addition, all RAIs should be sent to the project owner, not only consultants and agents, so that the owner is aware of the application's status.

by the stakeholders is that better coordination is needed between the District staff who identify water supply projects for inclusion in the regional water supply plan, and the District permitting staff who may eventually be responsible for reviewing an application for those projects.

Water suppliers are not required to choose a water supply development project identified in a regional water supply plan. However, by doing so, permit applicants should have confidence that the project has undergone initial screening for feasibility and has a likelihood of being permittable. The applicant should be assured that time and money spent in more detailed project development will not be wasted. To accomplish this, coordination between the staff who develop the regional water supply plan and the staff who are responsible for water use permitting is critical. Planning staff must know the criteria for permit issuance in order to incorporate conceptual level analysis and screening into plan development.

Similarly, the Districts need to ensure that permitting staff are knowledgeable about the projects in the plans, and the data and the analysis that supports those projects. While it is not required that projects identified in the plan be analyzed to the level of detail required to determine if they meet all the conditions for issuance of a consumptive use permit, an applicant who selects a project identified in the plan should have some assurances that 1) District staff are not only familiar with the project but will have access to and will apply the existing data available from the planning process when reviewing the application, and 2) permitting staff will facilitate, consistent with statute and District permitting rules, the successful permitting of the project.

Successful coordination, as outlined above, will promote the selection of sustainable water supply projects identified in the plans by improving the efficiency and timeliness of the consumptive use permitting process for those applicants who select them.

HTV/GM/as

cc: Ann B. Shortelle, Ph.D., Director, Office of Water Policy, FDEP



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THROUGH: Herschel T. Vinyard Jr. *HTV*
Secretary

FROM: Greg Munson *GM*
Deputy Secretary for Water Policy and Ecosystem Restoration

DATE: March 23, 2012

SUBJECT: Permitting of Conjunctive Use and other Multiple Water Sources

The Department recently conducted stakeholder sessions around the state with water users and environmental interests seeking input on ways to improve the consistency and effectiveness of the consumptive use permitting program. One issue raised by the stakeholders was the need for consumptive use permits to allow more flexibility in the use of multiple sources to meet permitted demands.

As we work with utilities and stakeholders around the state to meet our water supply challenge, a common theme is that reliance on a sole water source to meet a region's water needs may not be sustainable. Generally, the best way to meet future demands (other than conservation) is to diversify the sources of the region and maximize the degree of interconnection among sources within that region. This includes "conjunctive use," such as utilizing and combining surface water and ground water supplies, or any other use of multiple sources such as fresh or brackish groundwater, surface water or desalination of sea water. The benefits of such an approach by a regional water supply authority or a utility include a better ability to manage and prevent environmental impacts, improved system reliability, operational flexibility and emergency backup capability. Thus, the purpose of this memorandum is to promote conjunctive use

permitting, and thereby encourage water users and suppliers to coordinate in this way to meet future demands.

The consumptive use permitting program should facilitate and encourage the use of multiple sources when appropriate to achieve the environmental and operational benefits that result. Currently, the Water Management Districts (Districts) can and do authorize withdrawals and the use of multiple sources in a single permit, and should continue to do so when requested by an applicant. The Districts should work with the applicant to establish operational protocols for incorporation into the permit that govern the use of the water sources to collectively meet the needs of the permittee. Such protocols should provide for the use of the permitted sources in a way that encourages flexibility of operation while also ensuring that the conditions of issuance are met for the permit duration. For example, in years of abundant rainfall, the use of excess wet weather surface water may be maximized to provide a larger percentage of the overall water supply need. In drought years, a permittee may rely more heavily on sources that will not exacerbate the environmental effects of the drought, such as water stored in reservoirs or aquifer storage and recovery facilities, or desalination. Such protocols should include limits on the total amount of water available to be withdrawn from each source, as needed, within the flexible operational protocols.

HTV/GM/as

cc: Ann B. Shortelle, Ph.D., Director, Office of Water Policy, FDEP



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THROUGH: Herschel T. Vinyard Jr. *HTV*
Secretary

FROM: Greg Munson *GM*
Deputy Secretary for Water Policy and Ecosystem Restoration

DATE: March 23, 2012

SUBJECT: Guidance for Consumptive Use Permit Compliance Reporting
Requirements and Review

Consumptive use permitting is one of the critical programs implemented by the Water Management Districts (Districts) to manage our water resources. The permitting program ensures that water use is not harmful to the water resources of the area, is reasonable-beneficial, does not interfere with existing legal uses and is consistent with the public interest. The permitting program also provides water users with a level of certainty that water will be available for their use, consistent with the conditions of the permit, for the duration of the permit.

The Department recently conducted stakeholder sessions around the state with water users and environmental interests seeking input on ways to improve the consistency and effectiveness of the consumptive use permitting program. A frequent concern expressed by water users relates to the implementation of the 10-year compliance review included as part of 20-year or longer duration permits. This memo provides guidance for the management of 10-year compliance reports in the consumptive use permitting process in order to ensure that the reviews are being conducted appropriately and consistently among the Districts.

Section 373.236(4), F.S. provides:

“Where necessary to maintain reasonable assurance that the conditions for issuance of a 20-year permit can continue to be met, the governing board or department, in addition to any conditions required pursuant to s. 373.219, may require a compliance report by the permittee every 10 years during the term of a permit. The Suwannee River Water Management District may require a compliance report by the permittee every 5 years through July 1, 2015, and thereafter every 10 years during the term of the permit. This report shall contain sufficient data to maintain reasonable assurance that the initial conditions for permit issuance are met. Following review of this report, the governing board or the department may modify the permit to ensure that the use meets the conditions for issuance. Permit modifications pursuant to this subsection shall not be subject to competing applications, provided there is no increase in the permitted allocation or permit duration, and no change in source, except for changes in source requested by the District. This subsection shall not be construed to limit the existing authority of the department or the governing board to modify or revoke a consumptive use permit.”

Effective immediately, the following guidance will apply to Consumptive Use Permitting 10-year compliance reports:

The 10-Year Review Should Not be Treated as a New Permit or Renewal Application

The District should not allow the 10-year compliance report to result in a situation where the 20-year permit essentially becomes a 10-year permit by treating the 10-year compliance report like a new permit application or renewal. Under s. 373.236(4) Florida Statutes, the compliance report is to contain sufficient data to maintain reasonable assurance that the *original conditions for issuance* are met. The 10-year compliance report should not be used to make the permittee reaffirm the appropriateness of the permit or re-justify the permit based on new rules that have been adopted since the permit was originally issued.

The focus of the 10-year compliance report should be reviewing the data and information provided to the District as the result of the original permit conditions, or considering new information about the condition of the water resources or the effect of the withdrawal that was not available to inform the original permit decision. This information should be used to confirm the assumptions and conclusions made when the permit was issued. If this information indicates that the original conditions for issuance are not being met, only then should the compliance review result in permit modifications. For example, wetland monitoring data may indicate that unanticipated harm is occurring from the permitted withdrawal that would need to be addressed through changes to the permit.

If the 10-year compliance report shows the permittee is still in compliance with the initial conditions for issuance and all of its permit conditions, the District should allow the permittee to continue to operate without modification to its CUP.

Avoid Requesting Duplicate Information

Permittees should not be required to resubmit, as part of the 10-year permit compliance review, data and analyses which have otherwise been submitted to the District in periodic or annual reports, facilities plans, as part of monitoring requirements or in other related documents. The monitoring data submitted according to the permit conditions should be reviewed upon receipt to identify any problems and needed corrective actions to maintain compliance with the permit conditions. For the 10-year compliance report, the permittee should only be required to submit additional information that has not previously been submitted, or that summarizes previous data.

Reduction of Allocations During the Permit Term as a Result of Reduced Water Demand Should be Rare

Actual demand information submitted as part of the 10-year compliance report may be lower than the demand projections that were used during the original application review. This may occur due to enhanced water conservation, unanticipated changes in growth rates or changing market conditions for agricultural commodities. Generally, this should not result in reduced allocations as discussed below.

Water Conservation Savings

The Department recognizes that effective water conservation is critical to sustaining our water supplies, meeting future needs and reducing impacts on our fragile natural systems. Progress toward this important goal can be unintentionally frustrated during the compliance reporting process when permitted allocations are reduced because of the decline in projected water demand due to conservation measures. This practice may have the unintended effect of penalizing permittees for the successful implementation of conservation measures, and rewarding permittees for the wasteful use of water by keeping their permitted allocations intact.

Therefore, the Districts should continue to condition consumptive use permits on the implementation of water conservation measures and may require periodic updates to the water conservation plan, if provided for in the permit conditions, to achieve required targets or incorporate improved best management practices. However, the Districts should not use the 10-year compliance report or similar periodic report required by permit condition to reconsider the permittee's allocation for water based on

demand reductions resulting from successful water conservation. Doing so removes the incentive for permit holders to pursue necessary water conservation measures.

Differences Between Projected and Realized Growth

Changes in socio-economic conditions may result in realized demands for potable water supply that are different from the projected demands on which the permit allocation was based. To ensure that allocations continue to be based on reasonable-beneficial uses, but also that reductions are not based on short-term decreases in demand, a reduction in permitted allocation during the permit term should only be considered when:

- The difference in the projected demand and the water actually needed is considerable; and
- There is no reasonable likelihood that the allocation will be needed during the remainder of the permit term including consideration of a rebound in economic conditions.

Changes in Agricultural Markets

In response to changing market conditions, an agricultural permittee may choose to grow a crop during a given year that requires less water than the crop originally envisioned when the permit was issued. Because such a choice may change again, the permitted allocation should not be reduced during the 10-year compliance review. This will allow the permittee the flexibility to choose crops in future years in response to market conditions, as long as the originally permitted allocation is not exceeded.

Conclusion

This guidance will ensure that the 10-year compliance review is confined to its appropriate role as defined by Florida Statute, as well as encourage water conservation, provide appropriate certainty to permittees that their reasonable-beneficial needs will be met for the permit term and ensure water is available for new, economically beneficial activities when appropriate. It also furthers the statutory policy to promote the availability of sufficient water for all existing and future reasonable-beneficial uses and natural systems.

HTV/GM/as

cc: Ann B. Shortelle, Ph.D., Director, Office of Water Policy, FDEP



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THROUGH: Herschel T. Vinyard Jr. *HTV*
Secretary

FROM: Greg Munson *GM*
Deputy Secretary for Water Policy and Ecosystem Restoration

DATE: March 23, 2012

SUBJECT: Timing of the Development of Minimum Flow and Level Recovery
and Prevention Strategies

Minimum flows and levels (MFLs) are an important tool for ensuring that the current and future water supply needs of the state are met in a manner that protects our critical natural systems. MFLs are also key to identifying the water bodies that have already exceeded sustainable levels of withdrawals and are in need of recovery.

The Department recently conducted stakeholder sessions around the state with water users and environmental interests seeking input on ways to improve the consistency and effectiveness of the consumptive use permitting program. Stakeholders expressed concerns about the timing of development of needed recovery and prevention strategies in relation to the adoption of minimum flows and levels. This memo provides guidance on that issue.

Minimum flows and levels are one of the primary tools in Chapter 373, Florida Statutes, for protection of natural systems. They are defined in Section 373.042, Florida Statutes, as those flows and levels at which further withdrawals would be significantly harmful to the water resources or ecology of the area. Section 373.0421(2), Florida Statutes, recognizes that some water bodies may not meet their minimum flow or level upon adoption, or are expected to fall below the MFL within 20 years, and requires Water

Management Districts (Districts) to expeditiously develop recovery or prevention strategies, as appropriate, for those water bodies. The recovery or prevention strategy is intended to allow for an orderly transition to alternative water supplies, where needed, and to expeditiously provide adequate water for existing and future reasonable-beneficial uses. The recovery or prevention strategy includes phasing or a timetable in order to, in part, avoid abrupt modification of existing permits.

Additional direction is provided in the Water Resource Implementation Rule, 62-40.473(5), Florida Administrative Code, which requires the districts to consider simultaneously developing any needed recovery or prevention strategy required by Section 373.0421(2), Florida Statutes, when an MFL is adopted. This has the benefit of allowing water users and other interested parties to more fully understand the effects of a proposed minimum flow or level on current and future water use, including pathways to achieve recovery.

For future minimum flow or level adoption, and modification of existing MFLs, development of a minimum flow or level and any needed recovery or prevention strategy should occur simultaneously. If a District believes this should not be the case for a particular water body, it should present its alternative approach and rationale to the Department for consideration prior to adopting the minimum flow or level.

Additionally, if at some point after adoption, new information reveals that a minimum flow or level is not being met, the District shall expeditiously develop and implement a recovery or prevention strategy.

HTV/GM/as

cc: Ann B. Shortelle, Ph.D., Director, Office of Water Policy, DEP



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THROUGH: Herschel T. Vinyard Jr. *HTV*
Secretary

FROM: Greg Munson *GM*
Deputy Secretary for Water Policy and Ecosystem Restoration

DATE: March 23, 2012

SUBJECT: Guidance on Groundwater Augmentation of Surface Waters

Groundwater and surface water remain critical water supply sources for Floridians. Balancing the use of these sources to provide water supply without imperiling our natural systems is critical. This balance becomes particularly important when using groundwater to augment surface water that has been or could be impacted by withdrawals. This memo provides guidance to address that balance.

The Department recently conducted stakeholder sessions around the state with water users and environmental interests seeking input on ways to improve the consistency and effectiveness of the consumptive use permitting program. The stakeholders identified a need for additional consistency across the Water Management Districts (Districts) on the use of groundwater to augment surface waters.

Guidance related to the augmentation of surface waters with pumped groundwater is provided in Rule 62-40.410(7), Florida Administrative Code (F.A.C.) (Attachment 1). That section states, in part:

In implementing consumptive use permitting programs, the Department and Districts shall strive to prevent harm to natural systems without the need for artificial maintenance of natural systems by pumped groundwater augmentation.

The rule further provides factors that the Districts should consider in the adoption and implementation of consumptive use permitting rules regarding the use of pumped groundwater to artificially maintain natural systems that otherwise would be adversely affected by an applicant's proposed withdrawal for water supply.

These same principles should be applied in the development and implementation of recovery and prevention strategies for minimum flows and levels. Development of long-term recovery solutions that are self sustaining and do not involve ongoing operation and maintenance costs, should be the goal of plan development. Long-term augmentation of wetlands or other surface waters with pumped groundwater should be avoided. When long-term augmentation is the only feasible alternative, augmentation with the use of reclaimed water or recycled stormwater is encouraged, as provided in Rule 62-40.410(7)(b), F.A.C., when consistent with water quality standards. Further, when long-term augmentation is the only feasible alternative, short-term pilot projects using groundwater to test the efficacy of augmentation may be allowable, but should be limited in duration.

The use of groundwater for augmentation of small aesthetic or recreational surface water bodies may be requested by homeowners or other entities, unrelated to any request by the applicant for water supply withdrawals. Such uses need to be reviewed on an individual basis to determine if the use meets the conditions of issuance for a consumptive use permit. It is anticipated that such a use would only rarely meet the conditions of issuance. Further, the use of groundwater during times of drought or normal climactic variability to augment surface waters is generally not consistent with the public interest.

This memo is not applicable to the use of pumped groundwater to be discharged to surface waters for purposes other than those described above, such as augmentation of aquaculture ponds or for mixing with other waters for salinity adjustment. Such proposed uses should be reviewed on a case by case basis for compliance with the conditions for permit issuance.

If there are any questions or concerns regarding a proposal to use pumped groundwater to augment a surface water body, the District should contact the Office of Water Policy to discuss the proposed augmentation.

HTV/GM/as

Attachment

cc: Ann B. Shortelle, Ph.D., Director, Office of Water Policy, FDEP

Attachment 1

Rule 62-40.410(7), F.A.C

(7) In implementing consumptive use permitting programs, the Department and Districts shall strive to prevent harm to natural systems without the need for artificial maintenance of natural systems by pumped groundwater augmentation. If groundwater augmentation is authorized, reasonable assurance must be provided that such augmentation will not cause harm to natural systems.

(a) In the adoption and implementation of consumptive use permitting rules regarding use of pumped ground water to artificially maintain natural systems that otherwise would be adversely affected by withdrawals for water supply, consideration shall be given to the following factors:

1. Whether there are other economically, environmentally, and technically feasible means to avoid the impacts, including the use of alternative water sources, that would reduce or eliminate the impact. In determining economic feasibility, the Department and Districts shall consider costs and benefits;
2. The current condition of the natural system, and whether the system would be enhanced over the current condition through augmentation;
3. The geographic extent of the system to be augmented; and
4. The amount of water made available for water supply compared to the amount required for augmentation.

(b) The use of reclaimed water and recycled stormwater is encouraged in situations when the augmentation of wetlands is conducted, where practical and consistent with water quality protection.

(c) This paragraph is not intended to exclude other means to avoid or mitigate adverse impacts to natural systems.