

**TIME CERTAIN 11:30 A.M.**  
**ADD-ON**  
**Agenda Item No: 5A-2**

**PALM BEACH COUNTY  
BOARD OF COUNTY COMMISSIONERS  
AGENDA ITEM SUMMARY**

**Meeting Date:** November 17, 2009      [ ] Consent      [X] Regular  
[ ] Public Hearing

**Submitted By: Administration**  
**Submitted For: Administration**

## I. EXECUTIVE BRIEF

**Motion and Title: Staff recommends motion to approve:** filing of an Administrative Challenge to the South Florida Water Management District's (SFWMD) proposed "Year-Round Landscape Irrigation Rule".

**Summary:** On November 7, 2008, SFWMD published a notice of intent to adopt the Year Round Landscape Irrigation Rule (Rule). Due to concerns raised by local utilities, SFWMD subsequently scheduled the proposed Rule for a public hearing on January 12, 2009. On November 13, 2009, the SFWMD Governing Board concluded that Public Hearing by taking final action on the Rule. Since the original publication of the notice of intent, Palm Beach County Water Utilities Department (PBCWUD) has participated in the Rule's development. Although SFWMD has in good faith made some changes to the original published version of the Rule to address our concerns, staff believes the final version could create substantial problems for our water utility and its customers. Water Conservation is important to PBCWUD. The Board of County Commissioners has been diligent in supporting conservation by approving more than \$175 Million in alternative water supply projects. Staff believes that an unintended consequence of Rule implementation could result in a permanent reduction to the County's permitted potable water allocation, which could result in the stranding of constructed capacity and force the County to meet future demands for water supply through the development of costly alternative water supplies. This unintended consequence could significantly increase water utility rates to our customers, increase our carbon footprint due to alternative technologies being much more energy intensive, and potentially shift the allocation to utilities that do not have the demonstrated track record of low water consumption. Additionally, the Rule includes the issuance of "no-notice" general permits to all non-utility owners of individual wells. This could limit PBCWUD's ability to require mandatory hook-up for special assessment areas or to impose reasonable restrictions for protection of the potable water system, such as the installation of cross connection control devices. This could also become a vehicle for non-utility users to bring legal challenge against the County, which currently does not exist. Countywide (MJ)

**Background and Justification:** Since the original publication of the notice of intent, PBCWUD, among other utilities, has collaborated in rule development and adoption proceedings conducted by the SFWMD to modify existing rules, which impose year-round landscape irrigation limitations on all residential water users within south Florida. This process has resulted in modifications, the latest version of which imposes landscape limitation on the general public by: (1) deleting the exemption for outdoor use of water at single family dwellings and duplexes; (2) creating a no-notice general permit by rule for landscape irrigation; and (3) amending the water conservation measures required in District rules as a condition for issuance of water use permits to utilities. PBCWUD has been unable to reach agreement with SFWMD on these remaining issues, which if implemented without further change are anticipated to unnecessarily interfere with the ability of the County to operate its potable water systems and ensure a safe and dependable source of potable water for its utility customers. Over PBCWUD objections, the District Governing Board approved implementation of the "Year-Round Residential Irrigation Rule" on November 13, 2009. The only option available to PBCWUD to address these concerns is through administrative challenge in accordance with Section 120, Florida Statutes.

**Attachments:**

1. SFWMD Year Round Landscape Irrigation Rule Fact Sheet
2. Historical PBCWUD Per Capita Consumption

Recommended By: [Signature] 11/16/09  
Department Director Date

Approved By: [Signature] 11/16/09  
Assistant County Administrator Date



## II. FISCAL IMPACT ANALYSIS

### A. Five Year Summary of Fiscal Impact:

Fiscal Years	2010	2011	2012	2013	2014
Capital Expenditures	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
External Revenues	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
Program Income (County)	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
In-Kind Match County	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
NET FISCAL IMPACT (Additional Revenues)	<del>*</del>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
# ADDITIONAL FTE POSITIONS (Cumulative)	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>

Budget Account No: Fund \_\_\_\_\_ Agency \_\_\_\_\_ Org. \_\_\_\_\_ Object \_\_\_\_\_

Is Item Included in Current Budget? Yes ☒ No ☐

Reporting Category N/A

### B. Recommended Sources of Funds/Summary of Fiscal Impact:

- \* The total cost to challenge this rule is not anticipated to exceed \$100,000. At this time, PBCWUD recognizes that other utilities are also considering a rule challenge. Should that occur, the opportunity to share costs would reduce PBCWUD's costs to challenge the Rule.

### C. Department Fiscal Review: \_\_\_\_\_

## III. REVIEW COMMENTS

### A. OFMB Fiscal and/or Contract Development and Control Comments:

\* Fiscal impact is indeterminable at this time but the rule could potentially increase the water utility rates to PBC WUD customers and increase operating costs and capital costs. 11/16/09  
OFMB WD 11/16/09  
Contract and Development Control J. J. J. 11/16/09

### B. Legal Sufficiency:

WD 11/16/09  
Assistant County Attorney

### C. Other Department Review:

\_\_\_\_\_  
Department Director

Prepared Nov. 16, 2009

## **SFWMD YEAR ROUND LANDSCAPE IRRIGATION RULE FACT SHEET**

**1. What is the Year Round Landscape Irrigation Rule?**

It is a district-wide rule that will limit landscape irrigation and outdoor water use to 3 days a week or less and prohibit water use during daylight hours on a year round basis.

**2. How does the Year Round Landscape Irrigation Rule differ from the water use restrictions currently established by the South Florida Water Management District?**

The existing water use restrictions were imposed as a result of a water shortage brought about by drought conditions and must be rescinded when the water shortage no longer exists. The new rule will impose water use restrictions year round regardless of climatic conditions.

**3. Will the Year Round Landscape Irrigation Rule adversely impact Palm Beach County?**

Yes. The new year round water use restrictions will likely result in the permanent loss of the County's current permitted water allocation. Also, the proposed rule creates a new "no-notice general water use permit," which will be issued to all single family dwellings and duplexes that obtain water from a private well or surface water for irrigation. These new permits will likely interfere with the County's utility operations.

**4. How will the Year Round Landscape Irrigation Rule result in the permanent loss of Palm Beach County's current permitted allocation?**

In 2003 the County was issued a 20-year water use permit with a specified water allocation based on projected water demands. The County's permitted water allocation is subject to review every 5-years with the next one scheduled for 2013. Any decrease of the County's projected water demands caused by the Year Round Landscape Irrigation Rule will result in a reduction of the County's permitted water allocation because of a lack of demonstrated need for the duration of the permit. Under the District's Regional Water Availability Rule, this reduced allocation will be redistributed to other water users and will not be available for the County's use upon permit renewal.

**5. Will the permanent loss of the County's current permitted allocation adversely impact the citizens of Palm Beach County?**

Yes. The permanent loss of the County's current permitted allocation will have a negative financial impact by forcing the County to unnecessarily develop new alternative water supplies to meet future water demands, while at the same time continuing to incur costs for existing water supply facilities, which will not be fully utilized.



Also, the loss of permitted allocation will impede the County's ability to act as a regional water provider.

**6. How will the "No-Notice Permit" Interfere with Palm Beach County's utility operations?**

A significant number of the County's citizens, including many of its potable water customers, use private wells or surface water for irrigation. By issuing no-notice permits by rule to these persons, the new rule will in effect grant them legal standing to challenge the County's utility operations. Thus, the County could not mandatorily hook up customers, require installation of cross-connection control devices or take similar action without first seeking the District's consent. These new permittees would even have standing to challenge the modification or renewal of the County's own water use permits.

**7. If water utilities in the Lower West Coast have been able to operate under a year round landscape irrigation rule since 2003, why should the new rule pose a problem to Palm Beach County?**

There are significant differences between the existing Lower West Coast rule and the proposed district-wide rule. The Lower West Coast does not have a Regional Water Availability Rule, which means that any reduction in permitted allocation caused by the water use restrictions will be available for the utility's use upon permit renewal. Also, the Lower West Coast rule does not include no-notice general permits like the district-wide rule. These differences have prompted Collier County, who is currently subject to the Lower West Coast rule, to oppose the proposed district-wide rule.

**8. Did Palm Beach County bring these concerns to the District's attention during the rulemaking process?**

Yes. Palm Beach County participated fully in the rulemaking process and apprised District staff and the Governing Board of these concerns. Most recently, the County submitted a proposed rule amendment recommending that the Governing Board include a policy statement indicating that the water conservation savings resulting from the Year Round Landscape Irrigation Rule will not cause the permanent loss of water utility's permitted water allocation.

**9. What was the South Florida Water Management District's reaction to the County's suggestion?**

On November 13, 2009, the South Florida Water Management District rejected the County's proposed amendment and adopted the Year Round Rule. The Governing Board did not believe the proposed rule was the proper venue for addressing the County's concerns. They suggested the issues could be addressed in future permit-

ting or rulemaking actions. However, no specific time table was established for dealing with these problems.

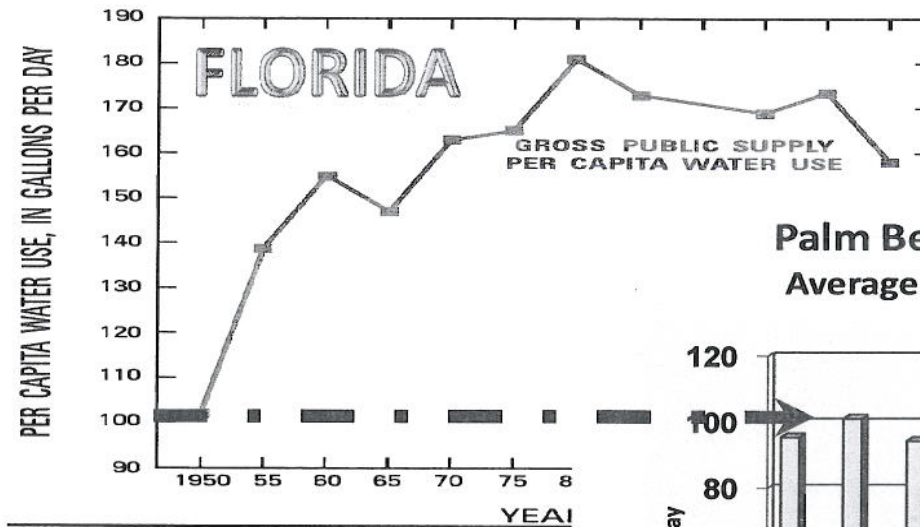
**10. What are Palm Beach County's options?**

It could do nothing and trust the matter is resolved through future rulemaking or permit proceedings or it could administratively challenge the rule. The deadline for administratively challenging the rule is November 23, 2009.

**11. What is County staff's recommendation?**

With no specific assurance that its concerns will be addressed, staff believes there is a very real possibility that Palm Beach County may have to confront this issue during its next 5-year permit review in 2013. Under these circumstances, staff believes it would be more cost effective to resolve this matter now through a rule challenge rather than permit litigation. A rule challenge is less costly and quicker than permit litigation, with a ruling likely to be issued within 6 months. Also, Palm Beach County is more likely to pick up allies in a rule challenge proceeding than in permit litigation. Finally, unlike permit litigation, the District and not the County would have the burden of proof and the final decision will be made by an administrative law judge and not the District Executive Director.

# Water: WUD Per Capita Status



**Palm Beach County Water Utilities  
Average Gross Per Capita Consumption**

