

DRAFT

Richard,

Here are the definitions of “water” (aka “waters in the state”) in Chp. 373, F.S. and “waters” (aka “waters of the state”) in Chp. 403, F.S. (See “B” and “C”) Also below is a quick and convoluted explanation of how they are different concepts from a FL Bar article (see “A”). Further below is the “surface water” description in 62-340.600, and it says only apply water quality standards in those waters listed in 403.013(13) (See “D”).

Nonetheless, every lake is a waters in the state no matter if artificial or natural. When one digs a manmade body of water or borrow pit, they have to get an ERP to impact the surface flow and the groundwater, thus I **assume** the issue of the water quality within that pit or lake during construction is addressed in the permit conditions. The ERP condition may be as simplistic as - there is no WQ standard in the borrow pit or manmade lake during the construction event. Maybe you or Gordon can ask this to a SWFWMD permit processor?? But once the construction work is done, it is a Class III body.

As we discussed all manmade water bodies are waters in the state. Now certain waters are exempt from regulation, e.g. if they are built for wastewater treatment or stormwater treatment. The DEP wetland and surface water rule 62-340 sheds more light on what is a surface water (see far below text or link: <http://www.dep.state.fl.us/legal/Rules/surfacewater/62-340/62-340.pdf> , specifically at 62-340.600) and also 62-340.700 discusses what is exempt from regulation (text not below).

- from R.M. on 8/26/08

A. Excerpt from FL Bar ELULS Treaties:

“Waters in the state,” as used in chapter 373, is distinguishable from “waters of the state,” as used in chapter 403 of the Florida Statutes. *See* § 403.031(13), Fla. Stat. (1992). Unlike “waters in the state,” which evolved from legal concepts describing the right to use water, “waters of the state” has its origins in common law concepts regarding public ownership of navigable, natural waterbodies. While the term “waters of the state” has been considerably broadened beyond its common law roots by both statute and court opinion, as it relates to agency jurisdiction over surface waters, it is still limited to the landward extent of waters of the state.

B.

373.019(20), F.S.

"Water" or "waters in the state" means any and all water on or beneath the surface of the ground or in the atmosphere, including natural or artificial watercourses, lakes, ponds, or diffused surface water and water percolating, standing, or flowing beneath the surface of the ground, as well as all coastal waters within the jurisdiction of the state.

C.

403.031(13), F.S.

"Waters" include, but are not limited to, rivers, lakes, streams, springs, impoundments, wetlands, and all other waters or bodies of water, including fresh, brackish, saline, tidal, surface,

or underground waters. Waters owned entirely by one person other than the state are included only in regard to possible discharge on other property or water. Underground waters include, but are not limited to, all underground waters passing through pores of rock or soils or flowing through in channels, whether manmade or natural. Solely for purposes of s. 403.0885, waters of the state also include navigable waters or waters of the contiguous zone as used in s. 502 of the Clean Water Act, as amended, 33 U.S.C. ss. 1251 et seq., as in existence on January 1, 1993, except for those navigable waters seaward of the boundaries of the state set forth in s. 1, Art. II of the State Constitution. Solely for purposes of this chapter, waters of the state also include the area bounded by the following:

(a) [DELETED LONG LEGAL DESCRIPTION OF MAINLY THE EVERGLADES]

(b) The area bounded by the line described in paragraph (a) generally includes those waters to be known as waters of the state. The landward extent of these waters shall be determined by the delineation methodology ratified in s. 373.4211. Any waters which are outside the general boundary line described in paragraph (a) but which are contiguous thereto by virtue of the presence of a wetland, watercourse, or other surface water, as determined by the delineation methodology ratified in s. 373.4211, shall be a part of this water body. Any areas within the line described in paragraph (a) which are neither a wetland nor surface water, as determined by the delineation methodology ratified in s. 373.4211, shall be excluded therefrom. If the Florida Environmental Regulation Commission designates the waters within the boundaries an Outstanding Florida Water, waters outside the boundaries shall not be included as part of such designation unless a hearing is held pursuant to notice in each appropriate county and the boundaries of such lands are specifically considered and described for such designation.

D.

62-340.600, F.A.C. Surface Waters.

(1) For the purposes of Section 373.421, F.S., surface waters are waters on the surface of the earth, contained in bounds created naturally or artificially, including, the Atlantic Ocean, the Gulf of Mexico, bays, bayous, sounds, estuaries, lagoons, lakes, ponds, impoundments, rivers, streams, springs, creeks, branches, sloughs, tributaries, and other watercourses. However, state water quality standards apply only to those waters defined in subsection 403.031(13), F.S.

(2) The landward extent of a surface water in the State for the purposes of implementing Section 373.414, F.S., shall be the more landward of the following:

(a) Wetlands as located by Rule 62-340.300, F.A.C., of this chapter;

(b) The mean high water line elevation for tidal water bodies;

(c) The ordinary high water line for non-tidal natural water bodies;

(d) The top of the bank for artificial lakes, borrow pits, canals, ditches and other artificial water bodies with side slopes of 1 foot vertical to 4 feet horizontal or steeper, excluding spoil banks when the canals and ditches have resulted from excavation into the ground; or

(e) The seasonal high water line for artificial lakes, borrow pits, canals, ditches, and other artificial water bodies with side slopes flatter than 1 foot vertical to 4 feet horizontal along with any artificial water body created by diking or impoundment above the ground.

(3) Determinations made pursuant to paragraphs (2)(b) and (2)(c) shall be for regulatory purposes and are not intended to be a delineation of the boundaries of lands for the purposes of title.