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2011 ANNUAL REPORT



PRESIDENT'S MESSAGE

What a year!

The utility industry is experiencing a string of years of unprecedented regulatory change, at a time of the greatest economic downturn in several generations. Increasingly, we are facing regulatory initiatives by various agencies suggesting investments to optimize one area of regulation that may conflict with goals in another area or will not yield environmental benefit commensurate with the investment. While Council members are attempting to deal with reduced revenues from economic contraction, we collectively remain challenged to effectively plan for and be ready to serve future growth associated with a recovery here in Florida. We must simultaneously manage regulatory uncertainty to ensure our investments made on behalf of the public are sound and will serve our communities for years.

As expected, 2010 was yet another year of opportunity to help shape regulatory uncertainty into reasonable public policy and serve our communities and the environment. At this time last year, the Utility Council reached out to our member utilities with a call for greater individual utility participation to support the Utility Council's actions at both the state and federal levels. We also implemented the first increase in member dues in a number of years. I am extremely proud to report to you that the membership has responded resoundingly, both with financial support and member participation. We are more active, in more places, than ever before!

The EPA's unprecedented numeric nutrient criteria initiative in Florida undoubtedly remains our largest single challenge. When this initiative first developed, the Utility Council led the effort to oppose EPA's ill-conceived efforts. Through our numerous outreach and partnering efforts, we have since been joined by a large host of other similarly effected associations representing numerous facets of the private and public sectors. We have a very strong State coalition and have received support from the Florida Congressional Delegation, Florida League of Cities and Association of Counties, and State governmental entities. Under the leadership of new FDEP Secretary Herschel Vinyard, the FDEP recently joined the chorus of Floridians telling EPA that Florida's water quality control program is second to none in the nation, and is best managed by the State.

Speaking of the new administration ... it is clear from Governor Scott's focus on restoring jobs and growth that our utilities will continue to be challenged to step up and ensure that critical utility services are available, are economical, and are provided in ways that protect the environment. This can only occur of course in partnership with state regulatory and planning agencies to ensure that investments are well targeted and effective. Although we confer regularly with FDEP leadership on specific issues, we have deferred our typical January "DEP Day" and will be meeting with senior FDEP leadership this



PRESIDENT'S MESSAGE

summer to discuss their initiatives, our industry's needs, and how we can best partner as regulator and regulated to serve the needs of Floridians. This meeting always is a good forum for increasing understanding and focusing combined efforts, and this year we look forward to especially poignant discussions. We are pleased as well to have Deputy Secretary Melissa Meeker joining us at this year's annual meeting to provide a preview of her new role as Deputy Secretary for Water Policy and the Environment.

Ms. Meeker recently conveyed her appreciation for the work products of the Reuse Workgroup. This group formed as a regularly convening workgroup as a result of discussions between then Secretary Sole and our Board at the January 2009 Utility Council "DEP Day". This group was formed to ensure that regulations being contemplated by water management districts and the FDEP were well coordinated and did not result in unintended consequences. As a result of the deliberations of that group, great progress has been made in defining concepts for incentivizing investments in reuse to offset groundwater withdrawals, as well as more clearly defining regulatory authority amongst several regulatory agencies. FDEP, the water management districts, and utilities alike have expressed satisfaction with the thoughtful and deliberative nature of the group.

These issues, as well as a number of others the Utility Council has focused on, are featured in more detail in the following sections. I think you will agree that the Council has been extremely active this year. Please make sure you check the members' only website on a regular basis: updates on Council activities are posted there weekly, and it is your best source for timely updates.

It is our mission to represent our members on the policy issues that impact the domestic wastewater treatment and reuse utility community. To facilitate broader participation, we held meetings in a number of different locations around the state this past year and are planning to do the same in the upcoming year. The efforts of the organization and our members are more important than ever, and I thank you for your outstanding response to our calls for service. I look forward to working with you in the upcoming year.

Best,

A handwritten signature in black ink that reads "Paul Steinbrecher".

Paul Steinbrecher, PE
President, FWEA Utility Council



RECLAIMED WATER WORKGROUP

In 2008, the Florida Department of Environmental Protection (FDEP) held a series of statewide workshops to discuss rules being proposed by three water management districts to apply water conservation measures to reclaimed water systems. The rules concerned Utility Council members because they were not consistent with existing FDEP rules regarding reuse and appeared to create conflicting regulation on reclaimed water providers in some instances. The Utility Council took a lead role in presenting alternatives to the proposed regulations that would maximize the beneficial use of reclaimed water without detrimentally impacting treatment plant operations. The Utility Council also recommended the formation of a workgroup, comprised of representatives from the FDEP, water management districts, utility agencies and other stakeholders, to collaboratively develop policy recommendations promoting the use of reclaimed water as an alternative water resource. The workgroup held its first meeting in February of 2009, with a member of the Utility Council Board serving as a co-facilitator with FDEP.

During the first year of meetings, the members identified the workgroup goals, developed a prioritized list of issues to be considered for policy making, and began to formulate supporting procedures and legislative language for consideration by the legislature. Policy language outlining a process for improving communication between the districts, FDEP and the utilities with regard to the availability and optimization of reclaimed water supplies was drafted by the workgroup and included in SB 550 during the 2010 legislative session. The proposed language was ultimately approved without change.

Following the 2010 legislative session, the workgroup changed focus from communication strategies to finding methods to increase the use of reclaimed water. The group recognized a local utility's need to protect its investment following construction of reclaimed water infrastructure by directing customers to use reclaimed water where feasible and available. This led to the formation of language proposing that local government be allowed to establish Mandatory Reuse Zones, service areas where the use of reclaimed water for appropriate purposes would receive preferential consideration of other sources. The workgroup also prepared language incentivizing the use of reclaimed water in the consumptive use permitting process to mitigate impacts caused by a proposed withdrawal



RECLAIMED WATER WORK GROUP

(impact offset) and to capture potable water being used by another permit holder for non-potable purposes by substituting reclaimed water for that use (substitution credits).

In early 2011, at the request of Representative Trudi Williams, the workgroup evaluated ways to minimize jurisdictional overlap between the FDEP and the water management districts. This led to the development of legislative language that clearly establishes the districts' limitations in regulating reclaimed water. Draft legislative language reflecting the concepts of Mandatory Reuse Zones, impact offsets, and substitution credits, combined with language resolving jurisdictional overlap, is currently being considered by the legislature in the 2011 session.

Remaining workgroup topics include the development of policy recommendations for reclaimed supplementation practices during peak demand and the compilation of all work products into a final report.

The work products of this workgroup are noteworthy for their deliberative thoroughness, and for their focus on better meeting sound public policy objectives by regulators and public water suppliers for efficient use of water and recognition and protection of the public's investments. The FWEA Utility Council is proud to honor the workgroups co-facilitators, Ms. Janet Llewellyn/FDEP, and Mr. Alan Oyler/FWEA Utility Council Board/City of Orlando, with the Utility Council Service Award for their efforts in leading this workgroup over the past two years!



NUMERIC NUTRIENT CRITERIA

The U.S. Environmental Protection Agency's (EPA) promulgation of numeric nutrient water quality criteria (NNC) is the most significant regulatory issue confronting Florida's domestic wastewater treatment utility community. Much of the focus on this rulemaking has centered on the rule's significant economic ramifications and the absence of a sound scientific underpinning for the criteria, particularly for the standards promulgated for Florida's rivers and streams. The FWEA Utility Council continues to be at the forefront of discussions and advocacy concerning the rule's regulatory, environmental, and economic implications.

EPA finalized its rule establishing numeric surface water standards for total nitrogen (TN) and total phosphorous (TP) in the Federal Register on December 6, 2010. The rule applies only to Florida's freshwaters – i.e. its lakes, rivers, streams, and springs. The "effective date" of the new rule is March 6, 2012. Several legal challenges to the rule have been initiated by the State of Florida and Florida's regulated community, including by the FWEA Utility Council and several wastewater treatment utilities in the Florida Panhandle. The Utility Council filed extensive technical, economic, and policy arguments to EPA during the rulemaking process (which EPA failed to respond to in any meaningful fashion), and these arguments will provide the basis of the Utility Council's legal challenge. These lawsuits are scheduled to conclude prior to the rule's March 2012 effective date. Regardless of the outcome of the suits, the matter will likely be appealed and ultimately decided by the 11th Circuit Court of Appeals.

On April 22, 2011, FDEP filed a petition with EPA asking the federal agency to withdraw its January 14, 2009 determination that numeric nutrient criteria are necessary in Florida, to repeal EPA's existing rule, and to "discontinue proposing or promulgating further numeric nutrient criteria in Florida." FDEP asked EPA to respond within 30 days. If EPA responds favorably, the FDEP petition lays out a plan for FDEP to promulgate its own state numeric nutrient criteria by January 2012. This schedule is very aggressive. The FWEA Utility Council will work with FDEP in any state rulemaking effort to promote scientifically defensible criteria and ensure that needed nutrient reductions are tailored to individual water bodies, as currently happens under the existing narrative standard. The Utility Council will also



NUMERIC NUTRIENT CRITERIA

keep its members informed of developments in the rulemaking process and how FDEP's new efforts impact the ongoing legal challenges to EPA's freshwater rule.

In addition to FDEP becoming more highly engaged in the nutrient criteria issue, members of Florida's Congressional Delegation have also taken significant actions. Senator Bill Nelson requested that EPA subject its freshwaters rule to an independent economic analysis prior to enforcing the rule. EPA complied with this request and committed to having its criteria reviewed by the National Academy of Sciences prior to the March 2012 effective date. Congressman Cliff Stearns, who chairs the Subcommittee on Oversight and Investigations, opened an investigation of EPA's decision making process associated with the rulemaking. In an April 21, 2011 letter to EPA, Chairman Stearns requested a number of documents that should shed light on EPA's decision to single out Florida for numeric nutrient criteria development. In addition to Senator Nelson and Congressman Stearns, other Florida Delegation members have sent letters to EPA and queried EPA Administrator Lisa Jackson in hearings regarding the veracity of EPA's unprecedented Florida rules. The Florida Legislature, in the meantime, is considering legislation directing FDEP to not implement EPA's rules, but to instead only promulgate science-based standards that work in concert with Florida's existing water quality programs.

These positive developments are not simply fortuitous. The FWEA Utility Council, its members, and other local government and private entities have worked hard to educate policymakers regarding the significant negative ramifications of EPA's numeric nutrient criteria rules and the flawed process EPA utilized in this unprecedented federal effort. In the coming year, the FWEA Utility Council will continue to advocate the use of science-based nutrient criteria that protect state water ecosystems and protect utility ratepayers from the economic burdens of unsound regulatory policy.



OCEAN OUTFALL

On July 1, 2008, SB 1302, "Ocean Outfall Bill", was adopted into law and contained the objective to increase the use of reclaimed water to offset the use of traditional urban water supplies and thereby reducing the amount of nutrients entering the near shore waters of the southeast coast and in southeast Florida through the following statutory requirements:

- Prohibits the new construction or expansion of wastewater ocean outfalls and limits the discharge of wastewater through ocean outfalls by 2025.
- Requires that discharge of domestic wastewater through ocean outfalls meet advanced wastewater treatment and management requirements by 2018.
- Contains a provision for meeting advanced wastewater treatment and management requirements for those facilities that achieve 100% reuse by 2018.
- Requires facilities achieve 60% reuse of actual annual outfall flow by Dec. 31, 2025 and allows discharges beyond that date that meet the advanced wastewater and treatment requirements and are a backup to a functioning reuse system.

Although only five southeast Florida utilities are impacted by this bill over 30% of the state's total population is impacted. The impacted utilities are: Miami-Dade Water & Sewer Department, City of Hollywood, Broward County, City of Boca Raton, and the South Central Regional Wastewater Treatment Facility.

Although this is a regional issue in the state, the southeast Florida utilities have routinely conferred with the FWEA Utility Council on this effort and specifically asked for Utility Council support. During the 2011 legislative session, the FWEA Utility Council supported the passing of HB 613 and SB 796 which clarified certain statutory language and incorporated some common-sense provisions to substantially improve the cost/benefit of the rule:

- The cost of compliance with the current outfall requirements. These costs will be in the billions of dollars for Miami-Dade County, and millions for Broward County and the City of Hollywood. These costs can be substantially reduced without endangering the environment by managing wet condition peak sewage flows more cost-effectively and by allowing utilities to achieve compliance by accounting for their entire reuse program instead of reuse from outfall flows alone. Also by allowing a percentage of the current annual flows to continue to be discharged during wet season peak events, the capital cost of compliance is reduced by more than 50%. That funding is desperately needed to replace aging infrastructure that poses a much greater public health and environmental threat in the coming years.



OCEAN OUTFALL

- The outfall statute authorized state funding to support compliance with the outfall requirements, however, no state funding support has been appropriated since the statute was adopted, and under current conditions, the likelihood of any state funding support is extremely remote.
- The current economic downturn and conservation efforts have simultaneously reduced water needs, water revenues, the ability of utilities and local governments to borrow to finance large capital projects, and the inclination of elected officials to increase rates, fees, and taxes on their economically stressed constituents.

Therefore, four changes were proposed to the Outfall requirements:

1. Provides that peak flow discharges from other wastewater management systems may not cumulatively exceed 5% of a facility's baseline flow, measured as a 5-year rolling average;
2. Provides that for utilities operating more than one facility, a "functioning reuse system" means a system that provides a minimum of 60% of a facility's baseline flow or, for utilities operating more than one facility, 60% of the utility's entire wastewater system flow on an annual basis on December 31, 2025;
3. Postpones the date by which domestic wastewater facilities must meet more stringent treatment and management requirements from December 31, 2018, to December 31, 2023.
4. Requires FDEP, South Florida Water Management District, and affected utilities to provide a report to the Legislature by February 15, 2015 and to coordinate compliance activities into the Lower East Coast Water Supply Plan.

At the time of this writing, HB 613 passed the House and has been placed in Senate Messages, while SB 796 is in the Senate's Budget Committee which is the final Senate committee stop before the bill is sent to the Senate.



WATER CONSERVATION

As water demands increase in the State of Florida, various techniques are being used to optimize water resources. Water Conservation is used to stretch groundwater supplies, and reclaimed water is used to avoid the use of higher quality groundwater. Since utilities in Florida frequently have the responsibility of providing water service, wastewater service, and reclaimed water service, it is crucial to coordinate those services to meet common objectives. FWEA Utility Council members worked closely with Florida Section of the American Water Works Association (FSAWWAUC) members to develop principles for developing water conservation policies. In September 2010, FSAWWAUC members adopted Guiding Principles for Establishing State Water Conservation Policy. The Guiding Principles include the following:

- Through cooperative agreement by FDEP, water management districts, and water utilities, a process should be established to set water conservation goals;
- Water conservation goals should be based on uniform metrics and take into account regional, socio-economic, resource variations, transient and seasonal populations, soil and climate variability, and development densities;
- A water utility that meets applicable goals achieves reasonable beneficial demand;
- Self supply should be regulated consistent with customers connected to public water supply systems;
- The use of reclaimed water should be encouraged where appropriate and where its use off-sets or minimizes additional withdrawals;
- Water utilities should establish rate structures that provide a price incentive to the customer to conserve water;
- Water distribution system efficiency should be promoted and services to retail and wholesale users should be metered;
- State water conservation policy should incentivize water conservation practices for utilities that use less water than the goals established for the utility.

Utilities that invest customers' money to conserve potable water or extend and expand reclaimed water systems should be provided incentives, such as a longer permit duration, or the ability to use the water conserved to meet growing customer demands. With proper regulatory assurance that demand reductions associated with conservation will not be allocated to other uses or users, investments to drive water conservation are expected to be accelerated.

As regulatory authorities and public water supply utilities work together to stretch groundwater supplies by expanding conservation initiatives, it has become increasingly important that the efforts be coordinated. The most cost effective and feasible options should be implemented first to so that limited public funds are used wisely.



2011 LEGISLATIVE SESSION

As the 2011 Legislative session winds down, long time observers of Florida's legislature call this year's session unprecedented as a whirlwind of activity continues. Republicans have super-majorities in both the House and Senate and a moderate has been replaced by a staunch conservative in the governor's mansion.

During this session, 2,175 bills were proposed between the House and Senate, as of today, 265 bills have passed either the House or Senate and only 39 have passed both the House and the Senate while 13 have been signed by the Governor. As expected, the budget has dominated the session with proposed large cuts to water management district budgets and a lack of Alternative Water Supply and infrastructure funding.

One of the main efforts of the FWEA Utility Council was to have proposed legislative language developed through the efforts of statewide Reclaimed Water Workgroup regarding reclaimed water. The group prevailed in coming to a common position supported by FDEP, water management districts, and endorsed unanimously by the Utility Council Board. It was submitted to legislative leaders so late in the session that it may not move this year and much of the Utility Council's efforts have focused on educating legislators regarding the importance of this issue to their communities. FDEP has indicated their satisfaction with the efforts of this group and the work product, and it is expected that the effort will continue next year.

During the legislative session, the FWEA Utility Council, in partnership with the FSAWWAUC, provided weekly legislative summaries, conducted weekly update conference calls, and initially monitored 47 bills. Proposed bills of interest to FWEA Utility Council members included:

HB 239: Numeric Nutrient Water Quality Criteria, was introduced by Rep. Trudi Williams. This bill was intended to be the State's response to the EPA's Numeric Nutrient Criteria rulemaking and went through various amendments before passing the House. The bill is currently in Senate messages and contains provisions for revisions to the dissolve oxygen standard and Reclassification of State Surface Waters. Since the introduction of the legislation, FDEP filed a petition opposing EPA's imposition of NNC on Florida. This action by



2011 LEGISLATIVE SESSION

FDEP achieves one of the objectives of the legislation – for the state to chart its own path forward that departs from EPA’s flawed nutrient rules. In addition, HB 239 was amended to include language directing the adoption of a revised dissolved oxygen standards in the state and the revision of Florida’s surface water classification system, which will help ameliorate some NNC issues. Many Utility Council members lent their legislative staffs to this coordinated effort, and it has paid dividends.

HB 1001: Permitting of Consumptive Uses of Water, was introduced by Representative Trudi Williams. When introduced, this bill contained a broad spectrum of water and wastewater related amendments similar to last sessions SB 550 including proposed amendments to 373.250, F.S. resulting from the Reclaimed Water Stakeholder Workgroup. For various reasons, this bill failed to advance.

SB 950: Water and Wastewater Utilities, was introduced by Senator Mike Bennett. When introduced, this bill only impacted private water and wastewater utilities, however, was later amended to contain similar, but very specific, language to that in HB 1457/SB 2014 pertaining to limitations on rates charged to consumers outside city limits. HB 223, the House companion of this bill failed and this bill is in the last committee in the Senate.

HB 613 and SB 796: Domestic Wastewater Discharged through Ocean Outfalls, were introduced by Representative Trujillo and Senator Diaz de la Portilla, respectively. These identical bills amended specific sections of 403.086, F.S. pertaining to wastewater discharge through ocean outfalls. The FWEA Utility Council submitted a letter in support of these bills at the request of South Florida Utility Council Members. The House version passed the House and is in Senate messages while the Senate version is in the last committee.

SB 2142: Water Management Districts, was introduced by the Senate Budget Committee. This bill is a Water Management District budget bill and impacts funding for projects including AWS projects. Versions of this bill passed both the House and the Senate, however, due to lack of concurrence, a House and Senate Conference Committee has been appointed.



2011 LEGISLATIVE SESSION

HB 13 and SB 1698: Onsite Sewage Treatment and Disposal Systems, were introduced by Representative Coley and Co-sponsors Adkins; Ahern; Albritton; Baxley; Broxson; Corcoran; Crisafulli; Drake; Ford; Gaetz; Goodson; Hudson; Plakon; Porter; Smith and Senator Dean respectively. The intent of these bills was to address issue that arose from the passing of portions of SB 550 last year in regards to on-site sewage treatment and disposal systems. The House version has passed the House and is in Senate messages while the Senate version is in the last committee.

HB 15 and SB 734: Assault or Battery on Utility Workers, were introduced by Representative Soto and Senator Wise. The FWEA Utility Council supported this bill as it classified assaults on utility workers to that of a law enforcement officer or firefighter. Members provided information regarding specific instances and experiences to Representatives and Senators. The House version has not advanced, however, the Senate version has been placed on the Senate calendar.

HB 457 and SB 606: Fertilizer, were introduced by Representative Ingram and Senator Evers, respectively. These bills preempt the authority of local governments to enact fertilizer ordinances more stringent than the state's Model Ordinance for Florida-Friendly Fertilizer Use on Urban Landscapes. The FWEA Utility Council monitored these bills to ensure biosolids were excluded. The House version is in Senate messages and the Senate version is in committee.

SB 410: Impact Fees, was introduced by Senator Bennett. This bill reenacts a provision relating to the burden of proof required by the government in an action challenging an impact fee – water and wastewater impact fees are exempt. The FWEA Utility Council monitored this bill to ensure the exemption for wastewater fees remained. This Bill has passed both the House and the Senate.

Although the 2011 legislative session is still underway, the FWEA Utility Council is already preparing for the 2012 Legislative session which begins January 10, 2012. It is important that all Utility Council members build relationships with their local representatives and inform them of the issues important to utilities.



UIC / PLANT PERMITTING

For a reclaimed water ASR project, two permits are required. One permit comes from the UIC program and the other comes from the Plant Permitting program. These two permits have overlaps and other differences that are difficult to sort through and are not clearly apparent in the regulations covering each permit.

FDEP is aware of these differences and has expressed a willingness to simplify and make the two rules consistent, and utilities also share this desire. An effort has just begun and we are hopeful that the Department will be able to focus resources on this streamlining activity. We will continue to talk to them about this opportunity in 2011 and keep the membership updated.



NACWA COORDINATION

FWEA Utility Council maintains a liaison and association with the National Association of Clean Water Agencies (NACWA), a national advocacy organization on behalf of wastewater utilities and associated agencies. NACWA is active in lobbying on federal legislation, monitoring regulation development and representing the wastewater utilities in regulation development. Through the association with NACWA the FWEA Utility Council is kept abreast of federal actions that impact the Utility Council members and receives support from a national level on federal issues that impact Florida. As an example, NACWA has provided active support in the Utility Council efforts to oppose the numeric nutrient criteria through several avenues including their most recent filing of legal action in support of the Utility Council position. Additionally, NACWA provides the Utility Council the monthly Clean Water Exchange newsletter on federal actions and initiatives at no charge.



MEMBERSHIP DUES

Historically, membership dues were established late in the calendar year and invoices were sent to members in January. Unfortunately, this schedule is out of sync with the budget calendar for most FWEA Utility Council members who operate on a fiscal year of October 1 to September 30. In order to notify members of dues for the upcoming fiscal year during their budget process, FWEA Utility Council will now send a letter to members informing them of anticipated dues for the upcoming budget year in the spring so that members have that information when they are building their own budgets. Invoices will be submitted to members in late summer and payment will be requested in October of each year. This will meet a request that we heard from our membership to notify them of the amount of dues at a time when they are preparing their budget, and will provide the FWEA Utility Council operating funds that will enable us to meet on-going expenses.

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