

391-3-6-.07 Surface Water Withdrawals. Amended

(1) Purpose. This chapter establishes procedures to be followed in obtaining a permit to withdraw, divert or impound surface waters of the State. It sets forth the types of information to be supplied on a permit application. It also outlines the procedures for granting, denying, revoking and modifying such permits.

(2) Definitions. Whenever a term appears in this Chapter which has been defined in the Georgia Water Quality control Act (O.C.G.A. § 12-5-31, et seq.) such definition shall apply. Whenever a term appears in this Chapter that is defined below, such definition shall apply, so long as such definitions is not inconsistent with any definition in the Georgia Water Control Act.

- (a) "Withdrawal" shall mean the taking away of surface water from its natural course.
- (b) "Diversion" shall mean a turning aside or altering of the natural course of surface water.
- (c) "Impoundment" shall mean the storing or retaining of surface water by whatever method or means.
- (d) "Watershed" means that area of land draining into any given point of a basin.
- (e) "Surface water(s) of the State" or "surface water(s)" shall mean any and all rivers, streams, creeks, branches, lakes, reservoirs, ponds, drainage systems, springs producing in excess of 100,000 gallons per day, and all other bodies of surface water, natural or artificial, lying within or forming a part of the boundaries of the State which are not entirely confined and retained completely upon the property of a single individual, partnership or corporation.
- (f) "Director" shall mean the Director of the Environmental Protection Division of the Department of Natural Resources, State of Georgia, or his designee.
- (g) "Farm uses" shall mean irrigation of any land used for general farming, forage, aquaculture, pasture, turf production, orchards, or tree and ornamental nurseries; provisions of water supply for farm animals, poultry farming, or any other activity conducted in the source of farming operation. Farm uses shall also include the processing or perishable agricultural products and the irrigation of recreational turf, except in the Chattahoochee River watershed upstream from the Peachtree Creek confluence, where irrigation of recreational turf shall not be considered a farm use.
- (h) "Domestic and personal uses" shall mean uses for drinking, cooking, washing, sanitary purposes, and all health related activities.
- (i) "Instream flow" shall mean that minimum continuous flow reserved to the Surface Waters of the State at or immediately downstream of the point of withdrawal, diversion, or impoundment.

(j) "7Q10 Flow" shall mean that lowest average stream flow expected to occur for seven consecutive days with an average frequency of once in ten years.

(k) "Non-Depletable Flow" shall mean that instream flow consisting of the 7Q10 flow plus an additional flow needed to ensure the availability of water to downstream users. Non-depletable flow is normally calculated by adding the 7Q10 flow to the pro rata share of the downstream withdrawal, using the drainage area ratio method.

(l) "Basin" shall mean that the area within one of the fourteen river drainages listed below comprising the sum of the watershed within that basin.

1. Altamaha
2. Chattahoochee
3. Coosa
4. Flint
5. Ochlockonee
6. Ocmulgee
7. Oconee
8. Ogeechee
9. St. Marys
10. Satilla
11. Savannah
12. Suwannee
13. Tallapoosa
14. Tennessee

(m) "Interbasin Transfer" shall mean a withdrawal or diversion of water from one river basin, followed by use and/or return of some or all of that water to a second river basin. The river basin from which the withdrawal or diversion occurs is termed the 'donor' basin, and the river basin to which all or a portion of the water is diverted and returned is termed the 'receiving' basin.

(n) "Unaccounted for Water" (UAW) means the difference between the total amount of water pumped into the water system from the source(s) and the amount of metered water use by the

customers of the water system expressed as a percentage of the total water pumped into the system. UAW generally includes system leakage and unmetered uses such as fire fighting, flushing, broken water mains, etc.

(o) “Made inflow to a reservoir” shall mean water that flows into a reservoir (1) after having been released from a storage project upstream of the reservoir as part of a plan approved by the Director; or (2) after having been discharged from a wastewater reclamation plant as part of a plan approved by the Director to increase flows into the reservoir.

(3) Permit Required.

(a) Any person who, on a monthly average, withdrawals more than 100,000 gallons of surface water per day; diverts surface water so as to reduce the flow by more than 100,000 gallons per day at the point where the watercourse, prior to diversion, leaves the property on which the diversion occurs; or constructs an impoundment which reduces the flow of surface water by more than 100,000 gallons per day downstream of the impoundment, must obtain a permit from the Director prior to any withdrawal, diversion or impoundment subject to the following exceptions:

1. Exceptions - No permit shall be required for the following:

(i) Any diversion accomplished as part of construction for transportation purposes which does not reduce the flow of surface waters in the diverted watercourse by more than 150,000 gallons per day on a monthly average.

(ii) Any reduction of flow of surface waters during the period of construction of an impoundment, including the initial filling of the impoundment;

(iii) Any farm pond or farm impoundment constructed and managed for the sole purpose of fish, wildlife, recreation or other farm uses.

(b) In evaluating a permit application for a new interbasin transfer, the Director should consider the factors specified in DNR Rule 391-3-6-.07(14) as well as the following:

1. Donor Basin Considerations.

(i) The quantity of the proposed withdrawal and the stream flow of the donor basin, with special consideration for dry years and low flow conditions;

(ii) The current and reasonably foreseeable future water needs of the donor basin, with special consideration for dry years and low flow conditions;

(iii) Protection of water quality in the donor basin, with special consideration for dry years and low flow conditions;

(iv) Any offsetting increases in flow in the donor basin that may be arranged through permit conditions;

(v) The number of downstream river miles from which water will be diverted as a result of the transfer.

(vi) The connection between surface water and groundwater in the donor basin, and the effect of the proposed transfer on either or both.

2. Receiving Basin Considerations.

(i) Determination of whether or not the applicant's proposed use is reasonable, including consideration of whether the applicant has implemented water conservation practices and achieved reasonable water conservation goals;

(ii) Assessment of the wastewater treatment capacity of the receiving basin;

(iii) The supply of water presently available to the receiving basin, as well as the estimates of overall current water demand and the reasonable foreseeable future water needs of the receiving basin;

(iv) The beneficial impact of any proposed transfer, and the demonstrated capability of the applicant to effectively implement its responsibilities under the requested permit;

(v) The impact of the proposed transfer on water conservation;

(vi) The applicant's efforts to explore all reasonable options for use of reclaimed water and recycling of available sources to meet the needs of the receiving basin;

(vii) Assessment of the adequacy of treatment capacity and current water quality conditions.

3. Considerations Affecting Both Basins.

(i) The economic feasibility, cost effectiveness, and environmental impacts of the proposed transfer in relation to alternative sources of water supply;

(ii) The cumulative impacts of the current and proposed interbasin transfers in the basin;

(iii) The requirements of the state and federal agencies with authority related to water resources;

(iv) The availability of water for responding to emergencies, including drought, in the donor basin and the receiving basin;

(v) The impact, whether beneficial or detrimental, on offstream and instream uses;

(vi) The quantity, quality, location, and timing of water returned to the donor basin, receiving basin, and basins downstream;

(vii) Impact on interstate water use;

(viii) The cumulative effect on the donor basin and the receiving basin of any water transfer or consumptive use that is authorized or forecasted;

(ix) Such other factors as are reasonably necessary to carry out the purposes of Georgia law.

4. Interbasin transfers of water as might occur in connection with mining, conveying, processing, sale, or shipment of minerals (e.g., as in the kaolin industry), or other products transported for further processing or sale shall be exempt from the requirements of 391-3-6-.07(3)(b).

(4) Permit Application: Non-Farm Uses.

(a) All applications shall be on forms furnished by the Division.

(b) The applications shall include:

1. Name and address of applicant;

2. Date of filing.

3. Source of water supply.

4. Quality applied for, both maximum day and monthly average. Maximum day withdrawal, diversion or impoundment shall be computed as the highest annual use by a water source or system in a 24-hour period, expressed in gallons per day. Monthly average withdrawal diversion or impoundment shall be computed as the highest total amount of water used by a water source or water system in any one month divided by the number of days in that month, expressed in gallons per day.

5. Use to be made, and documentation of need for water within five (5) years after date of filing.

6. Place of use.

7. Location withdrawal, diversion or impoundment plotted on a U.S. Geological Survey, 7½ minute quadrangle map or latest county highway map; and the latitude and longitude of the withdrawal expressed in degrees, minutes and seconds.

8. In the preparation of a permit application for a new permit or modification of an existing permit which includes an increase in the permitted water use (except for a farm use permit application), the applicant must submit to the Director for approval a water conservation plan prepared in accordance with the following guidelines. The plan must address the following items (or contain a statement why the item is not an appropriate part of the plan):

(i) System management;

(I) Within the most recent 24 month period, a minimum of twelve consecutive months of UAW data;

(II) A description of any current or planned programs to reduce UAW such as those listed below (include proposed schedules for planned activities);

I. Leak detection and elimination;

II. Availability of accurate maps of the water systems;

III. Meter maintenance, testing, replacement, calibration, etc.;

IV. Prevention of tank overflows;

V. Flushing programs without degradation of water quality;

VI. Prevention of unauthorized water use - fire hydrants, fire lines, etc.;

VII. A list of unmetered service connections including publicly owned facilities, churches, etc.;

VIII. Other;

(III) A list of inter-connections with other water systems and a description of any contractual agreements, type (emergency back-up wholesale sale or purchase) and purchase amounts;

(IV) Any additional current or planned activities pertaining to system management that will contribute to water conservation.

(ii) Treatment plant management:

(I) The condition, calibration frequency, type, etc. of raw and finished water metering;

(II) An analysis of in-plant water use for filter backwashing, over-flows, laboratory use, etc. as a percentage of total plant production. Also, the plan must outline any ongoing or planned plant improvements (including schedules for planned improvements) and/or revised operational procedures to reduce in-plant use;

(III) A description of any recycling or reuse of filter backwash water.

(iii) Rate making policies;

(I) A list of non-billed service connections. Also, if available, a breakdown by number of meters or % of total production for each class of customer, e.g., residential, commercial, industrial, wholesale;

(II) A copy of the water rate structure currently in use including any surcharges, demand charges, etc., which may apply to certain customers and a description of the effects of this rate structure on water conservation:

(III) A description of any system policies concerning second meters for landscape irrigation and may use of sewer meters for billing;

(IV) A statement in response to the following questions:

I. Is the water system financially self-supporting?

II. Are water system expenditures subsidized by non-water/sewer system revenues?

(iv) Plumbing ordinances and/or codes;

(I) A description of compliance with State Water Conservation Law which requires the use of ultra-low plumbing fixtures. The applicant may include copies of adopted ordinances if applicable;

(II) Ordinances/codes or other special requirements pertaining to outside water use such as landscape irrigation systems, commercial car washes etc.;

(v) Recycle - reuse; A description or accounting of any recycling or reuse of treated wastewater.

(vi) A description of current and planned education programs for the promotion of water conservation.

(vii) Progress report; Five years after issuance of a new or modified Surface Water Withdrawal Permit, the permittee must submit to the Director a progress report that outlines actions and/or improvements made to conserve water and reduce water loss, e.g. leak detection/repair, meter installation, calibration, or replacement, summer and/or peak use surcharges, enforcement of ultra-low flow plumbing fixture requirements, etc. Permittees with a total permitted withdrawal less than one million gallons per day on a monthly average may use a simplified reporting format supplied by the Division.

(viii) Water use data:

(I) Permittees must submit to the Director an annual water use data report that includes information on unaccounted for water for the past 12 months. This report will be submitted in conjunction with the annual water use report that is required pursuant to subsection 391-3-6-.07(15).

(ix) Long range planning.

All permittees must incorporate water conservation into long term water demand and supply planning. Permittees must develop water demand projections covering a 20 year time period using a method or methods approved by the Director. The demand projections must reflect the effects (demand reductions) inherent in the implementations of new or enhanced water conservation programs.

(x) A description of any additional water conservation activities.

9. A drought contingency plan submitted for approval by the Director and prepared in accordance with the following guidelines. The plan should include alternative system and resource management strategies to be implemented under drought conditions that may severely reduce the availability of the resource. The plan shall be consistent with Chapter 391-3-30 with respect to restrictions on outdoor water use. If there are conflicts between this plan and Chapter 391-3-30 with respect to restrictions on outdoor water use, Chapter 391-3-30 shall prevail. The applicant or permittee must provide the following items in the plan (or a statement as to why the item is not an appropriate part of the plan):

(i) Drought condition indicators;

(I) The applicant or permittee must develop a system for determining drought severity based on some approved indicator, e.g.:

I. Streamflow levels;

II. Ground water levels;

III. Reservoir storage or levels;

IV. Other.

(ii) Potable water use priorities program;

(I) The following order of potable water use priorities is generally recommended but may be modified as needed based on local conditions:

I. Emergency facilities for essential life support measures;

II. Domestic and personal uses, including drinking, cooking, washing, sanitary and health related;

III. Farm uses;

IV. Industrial uses (including those industries on public water systems);

V. Other uses such as lawn sprinkling, non-commercial car washing, garden watering, etc.;

VI. Outdoor recreational uses.

(II) Conditions or events that put priority use system into effect;

(III) Adopted priority use system for service during periods of water shortages;

(IV) Restrictions on lower priority uses (including enforcement procedures);

(V) Rationing and/or other emergency procedures.

(iii) Low flow protection;

(I) For applications for new or modified permits to withdraw, impound or divert surface water: No permit will be issued by the Director which authorizes the depletion of the instream flow established for the withdrawal, diversion or impoundment of surface water, except for periods of Emergency Water Shortage as described in Subsection 391-3-6-.07(12);

(II) For applications for new or modified permits, the applicant will be required to pass instream flow at or immediately downstream of the point of withdrawal, diversion or impoundment so long as it is available from upstream. When upstream flows drop below the required instream flow at the point of withdrawal, diversion or impoundment, the applicant will be required to pass that upstream flow. The Instream Flow required for new or modified permits in this subsection shall be:

I. The 7Q10 flow, if no unreasonable adverse effects to the stream or other water users will occur from the withdrawal, diversion or impoundment; or

II. The Non-Depletable Flow, as established by the Director, if probable impacts of the withdrawal, diversion or impoundment would occur to other water users; or

III. Other appropriate instream flow limit, as established by the Director;

(III) Low-flow monitoring plan that outlines applicant's procedure to monitor and protect instream flow below the point of withdrawal. Where applicable, the applicant must develop a plan for monitoring stream flow so that the instream flow limit can be protected. The monitoring plan must determine stream flow based on one of the following:

I. U.S.G.S. staff gage or continuous recording station;

II. Other staff gage as approved by the Director;

III. Weir;

IV. Other.

(iv) Water storage available to ensure availability of raw water to applicant through a critical drought period. Examples of suitable critical drought periods include but are not limited to: 50-year recurrence interval; 1954-1956 drought; 1984-1988 drought. The definition of available storage should include:

(I) Yield vs. drought return period;

(II) Storage type, e.g., main stream or off-stream supplemental;

(III) Any available alternate sources of finished and raw water such as ground water, interconnections, contractual agreements.

10. Consumptive loss of water withdrawn, diverted or impounded.

11. Permitted capacities of applicant's water treatment and wastewater treatment plants, existing or planned, that will treat water and wastewater to be generated by new or increased use.

12. Any other information deemed necessary; provided, however, any information already provided to the Director in connection with prior dealings with Division may be incorporated into the application by specific and detailed reference and a statement that the information is still valid and correct.

(5) Permit Applications: Farm Uses.

(a) Prior Uses. A permit for the withdrawal or diversion of surface waters for farm uses shall be issued by the Director to any person when the applicant submits an application which provides reasonable proof that the applicant's farm use of surface waters occurred prior to July 1, 1991. If submitted prior to July 1, 1991, an application for a permit to be issued based upon farm uses of surface waters occurred prior to July 1, 1988, shall be granted for the withdrawal or diversion of surface waters at a rate of withdrawal or diversion equal to the greater of the operating capacity in place for withdrawal or diversion on July 1, 1988, or, when measured in gallons per day on a monthly average for a calendar year, the greatest withdrawal or diversion capacity during the five-year period immediately preceding July 1, 1988.

(b) New Uses. If submitted after July 1, 1991, or regardless of when submitted, if it is based upon a withdrawal or diversion of surface waters for farm use occurring or proposed to occur on or after July 1, 1988, an application shall be subject to evaluation and classification pursuant to subsection 391-3-6-.07(4), -.07(6) and -.07(7) of these Rules; but a permit based upon such evaluation and classification shall be issued to ensure the applicant's right to a reasonable use of such surface waters.

(c) Permittees shall submit application for withdrawal or diversion of water for farm use to the Division on forms to be supplied by the Division. One application will be required for each water source. Applications will include the following information:

1. Applicant's full name;

2. Mailing address;
3. County in which water source is located;
4. Purpose of withdrawal;
5. Source pond, lake, reservoir, stream, river or sinkhole, with name;
6. Number of pumps withdrawing/diverting surface water from above source;
7. Design pumping capacity (total) of pumps withdrawing water from this source for this farm (gallons per minute);
8. Month and year this capacity was installed;
9. Number of acres irrigated from this water source, and average number of inches of water applied per year;
10. Whether or not chemicals, fertilizers, fungicides, herbicides, insecticides or nematicides are injected into the irrigation water; and
11. County map supplied by the Division (or equivalent) showing the location of the water source.

(6) Combination Uses.

A combination of farm and non-farm surface use shall be considered a non-farm surface use, unless the director determines that the predominant use to which the water is put is farm use.

(7) System of Classification for Competing Permit Applications.

(a) In situations involving competing uses, existing or proposed, for a supply of available surface water, the Division shall consider:

1. The number of persons using the particular water source and the object, extent and necessity of their respective withdrawals or uses;
2. Nature and size of water source;
3. Low flows during droughts of record;
4. Any water quality of the water source which would adversely affect its availability or fitness for use;

5. The probable severity and duration of low flows, poor water quality or other impairments of the water source which would adversely affect its availability or fitness for use;
6. The injury to public health, safety or welfare which would result if such impairment were not prevented or abated;
7. The kinds of businesses or activities to which the various uses are related and the economic consequences;
8. The importance and necessity of the uses, including farm uses, claimed by permit applicants and the extent of any injury or detriment caused or expected to be caused to other water uses;
9. Diversion from or reduction of flows in other watercourses;
10. The prior investments of any person in lands, and plans for the farm usage of water in connection with such lands, which plans have been submitted to the Director within a reasonable time after July 1, 1988; provided that the granting of such a permit shall not have unreasonably adverse effects upon other water uses in the area, including potential as well as present use;
11. The varying circumstances of each use.

(8) Priorities for Competing Applications.

(a) When there are competing applications for water from the same source, and the source is insufficient to supply all applicants, the following order of priorities shall prevail:

1. Emergency facilities for essential life support measures.
2. Domestic and personal uses, including drinking, cooking, washing, sanitary purposes and all health related activities.
3. Farm uses as defined herein.
4. Industrial uses (including those industries on public water systems).
5. Other uses such as lawn sprinkling, noncommercial car washing, garden watering, etc.
6. Outdoor recreational uses.

(b) Competing applicants or users within the above categories shall be assigned a priority rating based upon a consideration of the facts set forth in subsection 391-3-6-.07(6) of these Rules. In the event two or more competing applicants or users qualify equally under the priority rating, the Director will grant permits to such competing applicants, or modify the existing permits of the users, for use of specified quantities of surface water on a prorated or other reasonable basis in those situations where such action is feasible, provided, however, that the Director will give preference to an existing use over an initial application.

(c) The Division shall take into consideration the extent to which such withdrawals, diversions or impoundments are reasonably necessary in the judgment of the Director to meet the applicant's reasonable needs; including the needs of any third party to whom the permit applicant was furnishing water for the processing of perishable agricultural products which require minimum quantities of water to comply with State or federal laws or regulations, and shall grant a permit which shall meet those reasonable needs; provided, however, that the granting of such permit shall not have unreasonable adverse affect upon other water uses in the area including but not limited to public use, farm use, and potential as well as present use, and provide, further, however, notwithstanding the above, that the Director shall grant a permit to any permit applicant who on the effective date of this Act has outstanding indebtedness in the form of revenue certificates or general obligation bonds which are being amortized through the sale of surface water, the permitted quantity of such shall be at least in a amount consistent with the quantity for which the revenue certificates or general obligation bonds were issued.

(9) Duration of Permits.

(a) Any permit granted for the withdrawal, diversion or impoundment of surface waters shall be for a period of time not less than ten (10) years (unless the applicant requests a shorter period of time) nor more than twenty (20) years, except that farm use permits shall have no term and may be transferred or assigned to subsequent owners of the land which are the subject of such permit. Provided, however, that the Division shall be notified in writing by the permittee of such transfer or assignment. The Director may authorize a permit of duration of up to fifty (50) years in the case of a municipality or other governmental body where such period is required to provide for the retirement of bonds for the construction of water works or waste disposal facilities;

(b) If requested by the applicant, the Director may issue a temporary permit for less than ten (10) years, or letter of concurrence for transient uses lasting less than 180 days. Applicant's concurrence with a draft permit whose duration is less than ten (10) years shall serve as a request for a temporary permit.

(10) Renewal of Permits.

All permittees desiring to renew a permit shall submit an application for renewal to the Director within six (6) months prior to its expiration. All renewals will be treated in the same manner as the initial permit.

(11) Revocation, Suspension or Modification of Permits.

(a) Any permit granted for the withdrawal, division or impoundment of surface waters may be revoked, in whole or in part, permanently or temporarily, for the following reasons:

1. Any material false statement in an application for a permit or in any report required to be made;
2. Any willful violation of a condition of a permit;

3. Nonuse of the water supply (or a significant portion thereof) allowed by a permit for a period of two (2) consecutive years or more, unless the permittee can reasonably demonstrate that his nonuse was due to extreme hardship caused by factors beyond his control; except that this paragraph will not apply to farm use permits issued after initial use has commenced;

4. With the written consent of the permittee.

(b) Any such permit may be revoked, in whole or in part, for a period not to exceed one (1) year for violation of any provision of Section 12-5-31, et seq. of the Georgia Water Quality Control Act;

(c) Any such permit may be suspended or modified if the Director should determine that the quantity of water allowed under the permit is greater than that needed by the permittee for the particular use upon which the application for permit was based, or would prevent other applications from reasonable use of surface waters, including farm use;

(d) The director may suspend or modify a farm use permit if he should determine through inspection, investigation, or otherwise that the quantity of water allowed under the permit would prevent other applicants from reasonable use of surface waters for farm use;(e) Consistent with the consideration set forth in Chapter 391-3-6-.07(7), any such permit may be revoked, suspended or modified for any other good cause consistent with the health and safety of the citizens of this State and within the provisions of this Act;

(f) In the event of modification, suspension or revocation of permit, the Director shall serve written notice of such action on the permit holder and give the reason for such action.

(12) Emergency Water Shortage.

(a) Any permit may be suspended, restricted or otherwise modified by emergency order of the Director when an emergency period of water shortage exists. Prior to any such action, it must clearly appear to the Director from specific facts shown by affidavits of residents of the affected area of this State that an emergency period of water shortage exists within such area, so as to place in jeopardy the health or safety of the citizens of such area or to threaten serious harm to the water resources of the area. Any permittee has five (5) days from the date of mailing of the notice of the proposed change in the permit to appear in opposition to the proposed action. Except as to farm uses, any change, suspension or restriction in the permit is effective immediately upon receipt of such order by the permittee, his agent for service of process, or any agent of employee of the permittee who receives the notification at the permittee's principal place of business in the State. Any permittee, other than a farm use permittee, to whom such order is directed shall comply therewith immediately;

(b) Upon application, the permittee, including a farm use permittee, shall be afforded a hearing before a hearing officer appointed by the Department of Natural Resources within twenty (20) days of receipt of said application by the hearing officer. Farm use permittees may continue to make use of water to their permitted capacity during the appeal process, but failure to timely

request a hearing in accordance with Subsection (c) of Code Section 12-2-2 shall waive such right;

(c) In the event of dire emergency, only water for domestic and personal uses, for drinking, cooking, washing, sanitary purposes and all health related activities will be permitted. Farm uses will be given second priority; however, all other usages will be established by the Director based on the priorities established in subsection 391-3-6-.07(7). The importance and necessity of water for industrial purposes are in no way modified or diminished by this subsection;

(d) Upon expiration of the emergency period of water shortage, the permittee will be notified in writing of such expiration and the said permittee may then operate under the permit as issued prior to the emergency.

(13) Request for Modification of Unexpired Permit.

A permittee may seek modification of any of terms of an issued permit. The Director may modify such permit providing the permittee establishes at least one of the following:

(a) a change in conditions has resulted in a need by the permittee of more water than is allowed under the existing permit;

(b) The proposed modification would result in a more efficient use of water than is allowed under the existing permit; or

(c) A proposed change in conditions would result in a need by the permittee of more than is allowed under the existing permit. Any such modification shall be consistent with the health and safety of the citizens of this State and with provisions of this Act.

(14) New Interbasin Transfers.

(a) In the consideration of applications for permits which if granted would authorize a new interbasin transfer as defined in paragraph 391-3-6-.07(2)(m), the Director shall be bound by the following requirements:

1. The Director shall give due consideration to competing existing uses and applications for permits which would not involve interbasin transfer of surface water and, subject to subsection 391-3-6-.07(7), shall endeavor to allocate a reasonable supply of surface waters to such users and applicants.

(b) Public Notification.

1. A notice of the draft permit which would authorize a new interbasin transfer of surface water shall be circulated by at least one of the following means: publication in one or more newspapers of general circulation in the area which would be affected by such issuance; posting on website(s); or distribution to interested parties by email or other mechanisms.

2. The Director shall provide a public comment period of 30 days following the date of the notice of the draft permit.

3. If the Director determines sufficient public interest exists, he shall hold a hearing somewhere within the area affected prior to the issuance of the permit. The Director shall provide reasonable notice of such meeting.

(15) Records.

Except for farm use permits issued pursuant to subsection 391-3-6-.07(5), whenever required to carry out the objectives of Section 12-5-31 et seq. of the Georgia Water Quality Control Act, the Director may by order, permit or otherwise, in writing, require any person holding a permit or any other person who the Director reasonably believes in unlawfully withdrawing, diverting or impounding surface waters to:

(a) Establish and maintain records;

(b) Make reports;

(c) Install, use and maintain monitoring equipment or methods;

(d) Submit other information as required; provided any information already furnished to the Director in connection with prior dealing with the Division may be incorporated into the records or reports by specific and detailed reference and a statement that the information is still valid and correct;

(e) Except for farm uses, permittees shall submit annually to the Division a report of water use for the previous calendar year, to include monthly average and maximum day use for each month. Such reports shall be on forms provided by the Division and shall be submitted to the Division by January 31 of the current year for water use in the previous calendar year.

(16) Storage Rights

(a) When a user has contracted for the right to utilize storage space within a reservoir that is owned or operated by an agency of the federal government, the Director shall retain authority to allocate any State water rights subject to regulation under O.C.G.A. § 12-5-31, including the right to withdraw State waters from the project as well as the right to impound made inflow to the reservoir. When the Director allocates to a specific user made inflows to a reservoir, pursuant to the permitting authority and procedure provided by O.C.G.A. § 12-5-31, that user will have the right to impound such flows in the storage space for which it has contracted, to the extent storage space is available.

(b) The intent of subparagraph (a) is to retain and exercise to the fullest extent the State's sovereign authority to control the use and storage of surface waters within its boundaries. In the event a court of competent jurisdiction determines that the Director's exercise of authority

pursuant to this subsection is preempted by federal law, the Director's allocation shall be given effect to the maximum extent permissible.

(c) The following factors shall be considered by the Director when allocating made inflows to a reservoir pursuant to paragraph (a):

1. The criteria set forth in 391-3-6-.07(7).
2. Whether the water to be stored will be utilized in a manner consistent with the Georgia Comprehensive State-wide Water Management Plan and any plans prepared by the applicable Regional Water Planning Council or the Metropolitan North Georgia Water Planning District.
3. Such other physical and equitable factors as the Director may deem appropriate.

(17) Enforcement.

The administration and enforcement of these Rules shall be in accordance with the Georgia Water Quality Control Act and the Georgia Administrative Procedure Act.

(18) Effective Date.

This Rule shall become effective twenty days after filing with the Secretary of State's office.

Authority: Ga. L. 1964, p. 416, et seq., as amended (O.C.G.A. Sec. 12-5-20 et seq.), Ga. L. 1972, p. 1015, et seq., as amended (Ga. Code Ann. 40-3501 et seq.), Ga. L. 1977, p. 368-380 (Ga. Code Ann. Sec. 17-510.1); O.C.G.A. Sec. 12-5-31 et seq. **History.** Original Rule entitled "Surface Water Withdrawals" was filed on February 2, 1978; effective February 22, 1978. **Amended:** F. Apr. 3, 1990; eff. Apr. 23, 1990. **Amended:** F. Dec. 9, 1994; eff. Dec. 29, 1994. **Repealed:** ER. 391-3-6-0.32-.07, of the same title, adopted. F. May 1, 1996; eff. Apr. 25, 1996, the date of adoption, to remain in effect for a period of 120 days or until the effective date of a permanent Rule covering the same subject matter superseding this ER is adopted, as specified by the Agency. **Amended:** Permanent Rule of same title adopted. F. Jul. 10, 1996; eff. Jul. 30, 1996. **Amended:** F. Feb. 15, 2011; eff. Mar. 7, 2011. **Amended:** F. Dec. 13, 2013; eff. Jan. 2, 2014. **Amended:** F. July 15, 2015; eff. Aug. 4, 2015.