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Representing: FCG EC  
FWEA Utility Council  
Date Submitted: November 30, 2011  
Revised: December 7, 2011

## ERC Form for Proposed Rule Amendment

Amendment #1

FAC Rule No. 62-302.200(36)

FAW Notice of Proposed Rulemaking Draft Date: November 10, 2011

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On page 3756, modify the proposed language as follows:

### **Proposed Language as Published on November 10, 2011:**

Rule 62-302.200, F.A.C.

(36) “Stream” shall mean, for purposes of interpreting the narrative nutrient criterion in paragraph 62-302.530(47)(b), F.A.C., a predominantly fresh surface waterbody with perennial flow in a defined channel with banks during typical climatic and hydrologic conditions for its region within the state. During periods of drought, portions of a stream channel may exhibit a dry bed, but wetted pools are typically still present during these conditions. Streams do not include non-perennial water segments, wetlands, or portions of streams that exhibit lake characteristics (e.g., long water residence time, increased width, or predominance of biological taxa typically found in non-flowing conditions).

### **Proposed Amendment:**

Rule 62-302.200, F.A.C.

(36) “Stream” shall mean, for purposes of interpreting the narrative nutrient criterion in paragraph 62-302.530(47)(b), F.A.C., under paragraph 62-302.531(2)(c), F.A.C., a predominantly fresh surface waterbody with perennial flow in a defined channel with banks during typical climatic and hydrologic conditions for its region within the state. During periods of drought, portions of a stream channel may exhibit a dry bed, but wetted pools are typically still present during these conditions. Streams do not include:

(a) non-perennial water segments where fluctuating hydrologic conditions, including periods of desiccation, typically result in the dominance of wetland and/or terrestrial taxa (and corresponding reduction in obligate fluvial or lotic taxa), wetlands, portions of streams that exhibit lake characteristics (e.g., long water residence time, increased width, or predominance of biological taxa typically found in non-flowing

conditions) or tidally influenced segments that fluctuate between predominantly marine and predominantly fresh waters during typical climatic and hydrologic conditions; or

(b) ditches, canals and other conveyances, or segments of conveyances, that are man-made, or predominantly channelized or **predominantly** physically altered and;

1. are primarily used for water management purposes, such as flood protection, stormwater management, irrigation, or water supply; and

2. have marginal or poor stream habitat or habitat components, such as a lack of habitat or substrate that is biologically limited, because the conveyance has cross sections that are predominantly trapezoidal, has armored banks, or is maintained primarily for water conveyance.

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## ERC Form for Proposed Rule Amendment

Amendment #2

FAC Rule No. 62-302.300, 302.531, 302.532  
FAW Notice of Proposed Rulemaking Draft Date: November 10, 2011

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On pages 3757, 3759, 3762, modify the proposed language as follows:

### **Proposed Language as Published on November 10, 2011:**

Rule 62-302.531, F.A.C.

(9) Rule 62-302.531, F.A.C., shall not be implemented until it is approved in its entirety pursuant to 40 C.F.R. § 131.21 and 33 U.S.C. § 1313(c). If any provision of Rule 62-302.531, F.A.C., is later determined invalid, then the entirety of Rule 62-302.531, F.A.C., shall not be implemented.

Rule 62-302.532, F.A.C.

(3) The Department shall establish by rule or final order estuary specific numeric interpretations of the narrative nutrient criteria for TN and TP for Perdido Bay, Pensacola Bay (including Escambia Bay), St. Andrews Bay, Choctawhatchee Bay, and Apalachicola Bay by June 30, 2013, subject to the provisions of Chapter 120, F.S. The Department shall establish by rule or final order the estuary specific numeric interpretation of the narrative nutrient criteria for TN and TP for the remaining estuaries by June 30, 2015, subject to the provisions of Chapter 120, F.S. This subsection 62-302.532(3), F.A.C., shall not be implemented until Rule 62-302.531, F.A.C., is approved in its entirety pursuant to 40 C.F.R. § 131.21 and 33 U.S.C. § 1313(c). If any provision of Rule 62-302.531, F.A.C., is later determined invalid, then this subsection shall not be implemented.

### **Proposed Amendment:**

Rule 62-302.531(9), F.A.C.

The Commission adopts rules 62-302.200(4), .200(16)-(17), .200(22)-(25), .200(35)-(37), .200(39), 62.302.531, and 62.302.532(3), F.A.C., to ensure, as a matter of policy, that nutrient pollution is addressed in Florida in an integrated, comprehensive and consistent manner. Accordingly, these rules shall be effective only if EPA approves these rules in their entirety, concludes rulemaking that removes federal numeric nutrient criteria in response to the approval, and determines, in accordance with 33 U.S.C. § 1313(c)(3), that these rules sufficiently address EPA's January 14, 2009 determination. If any provision of these rules is determined to be invalid by EPA or in any administrative or judicial proceeding, then the entirety of these rules shall not be implemented.

Rule 62-302.531, F.A.C.

~~(9) Rule 62-302.531, F.A.C., shall not be implemented until it is approved in its entirety pursuant to 40 C.F.R. § 131.21 and 33 U.S.C. § 1313(e). If any provision of Rule 62-302.531, F.A.C., is later determined invalid, then the entirety of Rule 62-302.531, F.A.C., shall not be implemented.~~

Rule 62-302.532, F.A.C.

(3) The Department shall establish by rule or final order estuary specific numeric interpretations of the narrative nutrient criteria for TN and TP for Perdido Bay, Pensacola Bay (including Escambia Bay), St. Andrews Bay, Choctawhatchee Bay, and Apalachicola Bay by June 30, 2013, subject to the provisions of Chapter 120, F.S. The Department shall establish by rule or final order the estuary specific numeric interpretation of the narrative nutrient criteria for TN and TP for the remaining estuaries by June 30, 2015, subject to the provisions of Chapter 120, F.S. ~~This subsection 62-302.532(3), F.A.C., shall not be implemented until Rule 62-302.531, F.A.C., is approved in its entirety pursuant to 40 C.F.R. § 131.21 and 33 U.S.C. § 1313(e). If any provision of Rule 62-302.531, F.A.C., is later determined invalid, then this subsection shall not be implemented.~~

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