

BEFORE THE GOVERNING BOARD OF THE
SOUTH FLORIDA WATER MANAGEMENT DISTRICT

ORDER NO.: 2022- 070 FOF

IN THE MATTER OF:

RECEIVED
DISTRICT CLERK'S OFFICE

Approval of the 2022
Lower West Coast
Water Supply Plan Update
_____ /

9:22 am Dec 19, 2022

SOUTH FLORIDA
WATER MANAGEMENT DISTRICT



FINAL ORDER APPROVING THE 2022 LOWER WEST COAST
WATER SUPPLY PLAN UPDATE

The Governing Board of the South Florida Water Management District ("District"), after considering Staff recommendations and being otherwise fully apprised, issues this Final Order pursuant to Sections 373.036, 373.083, and 373.709, Florida Statutes, based on the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. The Lower West Coast ("LWC") is one of five regional planning areas in the District. The planning area covers approximately 5,100 square miles and includes all of Lee County, most of Collier County, and portions of Charlotte, Glades, Hendry, and Monroe counties as well as the Seminole Tribe of Florida Immokalee's Reservation.

2. The LWC Planning Area includes large natural systems such as the Caloosahatchee River and Estuary, Big Cypress National Preserve, a portion of the Everglades watershed, and other natural lands such as Corkscrew Regional Ecosystem Watershed, Picayune Strand State Forest, and Fakahatchee Strand Preserve.

3. In 2017, the District's Governing Board approved the 2017 LWC Water Supply Plan Update.

4. The purpose of this effort is to update the 2017 LWC Water Supply Plan Update ("2022 LWC Plan Update" or "Plan") and establish a framework for future District

actions to meet the water supply and natural resource protection requirements of Chapter 373, Fla. Stat.

5. The 2022 LWC Plan Update is based on a planning period of 2020-2045. It includes the following: 1) water demand projections for six water use categories; 2) a water supply development component; 3) a water resource development component; 4) the adopted MFLs; 5) the MFL recovery and prevention strategies; 6) consideration of how the water supply and resource development components serve the public interest or save costs; 7) technical data; and 8) a funding strategy.

6. Total average water use in the LWC is projected to be 1,179.37 million gallons per day (mgd) in 2045, which is 165.94 mgd more than the estimated 2020 average water use.

7. Agricultural water supply is the LWC Planning Area's largest water use category, representing 53 percent of the total 2045 average water demand, or 621.40 mgd. Irrigated agricultural acreage is projected to increase from an estimated 291,765 acres in 2020 to approximately 307,062 acres in 2045.

8. Population in the LWC is expected to increase from 1,188,599 people in 2020 to approximately 1,628,546 people in 2045. Drinking water supply is the third largest water use category, representing 16 percent of the total 2045 average water demand, or 186.82 mgd.

9. The 2022 LWC Plan Update concludes there is sufficient water to continue meeting the needs of the LWC Planning Area during a 1-in-10-year drought condition through 2045 with appropriate management, conservation, and implementation of projects.

10. The 2022 LWC Plan Update takes into account cumulative impacts on water resources and guides future management of those resources 1) to ensure adequate water

supply for existing and projected reasonable-beneficial uses, and 2) to sustain the water resources and related natural systems during average and 1-in-10-year drought conditions through the year 2045.

11. The 2022 LWC Plan Update concludes that additional water resource development projects and specific water supply development projects are needed to meet the projected 2045 water demands.

12. The 2022 LWC Plan Update recommends continued coordination with agricultural stakeholders, local governments, utilities, and other water users; natural resource protection; and water level and water quality monitoring.

13. In addition to the recommendations in the 2022 LWC Plan Update, the Comprehensive Everglades Restoration Plan and programs will maximize water resources by addressing issues of timing, retention, and freshwater flow regimes to the coastal environmental resources inside and outside of the planning area. Once projects become operational, they will be re-evaluated to determine the potential availability of surface water to meet the demands of reasonable-beneficial uses within the LWC Planning Area.

14. The public participated in the development of the 2022 LWC Plan Update. The District held three virtual workshops in March 2022, May 2022, and September 2022. The role of the workshops was to receive public input, contribute local knowledge and expertise, and reflect the collective concerns of the various stakeholders in the planning region.

15. The Draft 2022 LWC Plan Update was made available for public review and comment from August 25, 2022 through November 4, 2022, which included an extension due to Hurricane Ian. The comments were evaluated and, when appropriate, incorporated into the final draft.

16. The 2022 LWC Plan Update is not a self-executing document. Implementation of the 2022 LWC Plan Update will occur through a variety of future Governing Board actions. A flexible course of action is proposed. Future decisions about contracts, research, budgetary appropriations, cost-sharing arrangements, rulemaking, permitting, operational protocol, local agreements, and inter-governmental coordination will commit the District to a specific direction.

17. The 2022 LWC Plan Update, including the associated appendices and support document, can be found at the following link: www.sfwmd.gov/our-work/water-supply/lower-west-coast. Interested parties may provide Staff with minor comments to the 2022 LWC Plan Update.

CONCLUSIONS OF LAW

18. Water management district governing boards are authorized to undertake regional water supply planning efforts. This authorization includes updating existing plans such as the 2022 LWC Plan Update. §373.709, Fla. Stat.

19. Section 373.709, Fla. Stat., establishes a framework for the regional water supply plan's scope, analysis, implementation, and process. Additionally, specific water resource development and water supply development projects must be included in regional water supply plans.

20. Water supply plans must include intermediate water use projections for each five year interval. Fla. Admin. Code R. 62-40.531(1)(a). Water management districts shall update each regional water supply plan every five years. Fla. Admin. Code R. 62-40.531(8).

21. The Governing Board concludes that the 2022 LWC Plan Update meets the requirements of Section 373.709, Fla. Stat., and Rule 62-40.531, Fla. Admin. Code.

22. While the Governing Board's approval of a water supply plan is not subject to rulemaking requirements, any portion of an approved water supply plan that affects the substantial interests of a party is subject to challenge pursuant to Section 120.569, Fla. Stat. § 373.709(5), Fla. Stat. A Notice of Rights is attached hereto as Exhibit A.

23. The Notice of Rights does not cover future Governing Board actions to implement the 2022 LWC Plan Update. When implementing action is taken, the Governing Board will provide a point of entry to substantially affected parties, as appropriate.

24. The 2022 LWC Plan Update may be updated or amended as new technical information and analysis become available. Such updates will occur no later than five years from the entry of this order and in accordance with Section 373.709, Fla. Stat.

ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, it is ORDERED:

25. The 2022 Lower West Coast Water Supply Plan Update is approved.

26. Staff is authorized to make minor changes to the 2022 LWC Plan Update that do not alter the substance of the Plan in response to submitted stakeholder comments. Staff is also authorized to address minor typos, grammar, and spacing issues to the 2022 LWC Plan Update that do not alter the substance of the Plan. Such changes must occur within 30 days of the December 8, 2022 Governing Board meeting.

27. Staff may distribute notice of this Order by certified mail, regular mail, and/or electronic mail to persons who have participated in the Plan development process and those entities identified as appropriate for implementing water supply development projects. Notice shall also be published in the Florida Administrative Register and newspapers of general circulation within the planning region.

DONE AND SO ORDERED in West Palm Beach, Florida, on this 16th day of
December, 2022.

SOUTH FLORIDA WATER
MANAGEMENT DISTRICT
By its Governing Board



Drew Bartlett
Executive Director

NOTICE OF RIGHTS

As required by Chapter 120, Florida Statutes, the following provides notice of the opportunities which may be available for administrative hearing pursuant to Sections 120.569 and 120.57, Florida Statutes, or judicial review pursuant to Section 120.68, Florida Statutes, when the substantial interests of a party are determined by an agency. Please note that this Notice of Rights is not intended to provide legal advice. Some of the legal proceedings detailed below may not be applicable or appropriate for your situation. You may wish to consult an attorney regarding your legal rights.

RIGHT TO REQUEST ADMINISTRATIVE HEARING

A person whose substantial interests are or may be affected by the South Florida Water Management District's (District) action has the right to request an administrative hearing on that action pursuant to Sections 120.569 and 120.57, Florida Statutes. Persons seeking a hearing on a District decision which affects or may affect their substantial interests shall file a petition for hearing in accordance with the filing instructions set forth herein within 21 days of receipt of written notice of the decision unless one of the following shorter time periods apply: (1) within 14 days of the notice of consolidated intent to grant or deny concurrently reviewed applications for environmental resource permits and use of sovereign submerged lands pursuant to Section 373.427, Florida Statutes; or (2) within 14 days of service of an Administrative Order pursuant to Section 373.119(1), Florida Statutes. "Receipt of written notice of agency decision" means receipt of written notice through mail, electronic mail, posting, or publication that the District has taken or intends to take final agency action. Any person who receives written notice of a District decision and fails to file a written request for hearing within the timeframe described above waives the right to request a hearing on that decision.

If the District takes final agency action that materially differs from the noticed intended agency decision, persons who may be substantially affected shall, unless otherwise provided by law, have an additional point of entry pursuant to Rule 28-106.111, Florida Administrative Code.

Any person to whom an emergency order is directed pursuant to Section 373.119(2), Florida Statutes, shall comply therewith immediately, but on petition to the board shall be afforded a hearing as soon as possible.

A person may file a request for an extension of time for filing a petition. The District may grant the request for good cause. Requests for extension of time must be filed with the District prior to the deadline for filing a petition for hearing. Such requests for extension shall contain a certificate that the moving party has consulted with all other parties concerning the extension and whether the District and any other parties agree to or oppose the extension. A timely request for an extension of time shall toll the running of the time period for filing a petition until the request is acted upon.

FILING INSTRUCTIONS

A petition for administrative hearing must be filed with the Office of the District Clerk. Filings with the Office of the District Clerk may be made by mail, hand-delivery, or e-mail. Filings by facsimile will not be accepted. A petition for administrative hearing or other document is deemed filed upon receipt during normal business hours by the Office of the District Clerk at the District's headquarters in West Palm Beach, Florida. The District's normal business hours are 8:00 a.m. – 5:00 p.m., excluding weekends and District holidays. Any document received by the Office of the District Clerk after 5:00 p.m. shall be deemed filed as of 8:00 a.m. on the next regular business day.

Additional filing instructions are as follows:

- Filings by mail must be addressed to the Office of the District Clerk, 3301 Gun Club Road, West Palm Beach, Florida 33406.
- Filings by hand-delivery must be delivered to the Office of the District Clerk. Delivery of a petition to the District's security desk does not constitute filing. It will be necessary to request that the District's security officer contact the Office of the District Clerk. An employee of the District's Clerk's office will receive and process the petition.
- Filings by e-mail must be transmitted to the Office of the District Clerk at clerk@sfwmd.gov. The filing date for a document transmitted by electronic mail shall be the date the Office of the District Clerk receives the complete document.

INITIATION OF ADMINISTRATIVE HEARING

Pursuant to Sections 120.54(5)(b)4. and 120.569(2)(c), Florida Statutes, and Rules 28-106.201 and 28-106.301, Florida Administrative Code, initiation of an administrative hearing shall be made by written petition to the District in legible form and on 8 1/2 by 11 inch white paper. All petitions shall contain:

1. Identification of the action being contested, including the permit number, application number, District file number or any other District identification number, if known.
2. The name, address, any email address, any facsimile number, and telephone number of the petitioner, petitioner's attorney or qualified representative, if any.
3. An explanation of how the petitioner's substantial interests will be affected by the agency determination.
4. A statement of when and how the petitioner received notice of the District's decision.
5. A statement of all disputed issues of material fact. If there are none, the petition must so indicate.
6. A concise statement of the ultimate facts alleged, including the specific facts the petitioner contends warrant reversal or modification of the District's proposed action.
7. A statement of the specific rules or statutes the petitioner contends require reversal or modification of the District's proposed action.
8. If disputed issues of material fact exist, the statement must also include an explanation of how the alleged facts relate to the specific rules or statutes.
9. A statement of the relief sought by the petitioner, stating precisely the action the petitioner wishes the District to take with respect to the District's proposed action.

MEDIATION

The procedures for pursuing mediation are set forth in Section 120.573, Florida Statutes, and Rules 28-106.111 and 28-106.401–.405, Florida Administrative Code. The District is not proposing mediation for this agency action under Section 120.573, Florida Statutes, at this time.

RIGHT TO SEEK JUDICIAL REVIEW

Pursuant to Section 120.68, Florida Statutes, and in accordance with Florida Rule of Appellate Procedure 9.110, a party who is adversely affected by final District action may seek judicial review of the District's final decision by filing a notice of appeal with the Office of the District Clerk in accordance with the filing instructions set forth herein within 30 days of rendition of the order to be reviewed, and by filing a copy of the notice with the appropriate district court of appeals via the Florida Courts E-Filing Portal.