

**BEFORE THE GOVERNING BOARD OF THE
SOUTH FLORIDA WATER MANAGEMENT DISTRICT**

SFWMD No. 2020-012-DAO-WS

IN THE MATTER OF:

Declaration of Modified Phase I Water Shortage Restrictions for the Agriculture, Nursery, and Golf Course Use Classes, and Modified Phase III Water Shortage Restrictions for the Landscape Irrigation and Recreation Area Use Classes Withdrawing Surface and Groundwater within Lee County.

**RECEIVED
DISTRICT CLERK'S OFFICE**

4:45 pm Apr 22, 2020

**SOUTH FLORIDA
WATER MANAGEMENT DISTRICT**



**DECLARATION OF WATER SHORTAGE
IMPOSING MODIFIED PHASE I AND PHASE III RESTRICTIONS**

The Executive Director of the South Florida Water Management District (District), after considering the recommendations of District staff and direction of the Governing Board, issues this Order pursuant to Sections 373.083, 373.175, and 373.246, Florida Statutes, and Chapter 40E-21 Florida Administrative Code, based on the following:

AREA OF APPLICATION

1. The sources of water affected by this Order are surface and groundwater in incorporated¹ and unincorporated Lee County (Lee County) which is in the Caloosahatchee River Watershed North and South water use basins, as described in subsections 40E-21.631(1)(g) and 40E-21.691(7)(a) and (b), Florida Administrative Code. The groundwater sources in Lee County subject to this Order are the Surficial, Lower Tamiami, Sandstone, Mid-Hawthorn, Lower-Hawthorn, and Floridan aquifers, as

¹ Incorporated Lee County includes the City of Cape Coral, the City of Fort Myers, the City of Sanibel, the Town of Fort Myers Beach, the Village of Estero, and the City of Bonita Springs.

described in subsection 40E-21.631(2), Florida Administrative Code. A map depicting the area is attached and incorporated as Exhibit A.

2. The recreation area use class, identified in subsection 40E-21.651(3)(d), Florida Administrative Code, located in Lee County, is subject to this Order.

3. The landscape irrigation use class, identified in subsections 40E-21.651(3)(b) and (c), Florida Administrative Code, located in Lee County, is subject to this Order.

4. The agriculture use class, identified in subsection 40E-21.651(2), Florida Administrative Code, located in Lee County, is subject to this Order.

5. The nursery use class, identified in subsection 40E-21.651(3)(a), Florida Administrative Code, located in Lee County, is subject to this Order.

6. The golf course use class, identified in subsection 40E-21.651(3)(e), Florida Administrative Code, located in Lee County, is subject to this Order.

FINDINGS OF FACT

7. On April 18, 2020, an Order on Landscape Irrigation Conservation Measures Amid Dry Conditions was issued for all landscape irrigation water users withdrawing surface or groundwater within the District's boundaries. A copy of SFWMD No. 2020-008-DAO-WS is available from the District Clerk.

8. At its April 9, 2020, Business Meeting, the Governing Board gave the Executive Director the authority to issue, modify, and rescind water shortage orders as necessary to assess and address dry conditions. This includes authority to invoke mandatory water use restrictions and to equitably distribute water supplies to prevent

serious harm to the water resources if increased vigilance of the year-round landscaping irrigation conservation measures is insufficient.

9. District staff has been monitoring the water resources' conditions and the needs of water users as required by Rule 40E-21.221, Florida Administrative Code. Since issuing SFWMD No. 2020-008-DAO-WS, the water resource concerns within Lee County have increased.

10. Limited rainfall throughout the dry season has led to lower water levels within the Lower West Coast Region. From September 2019 through March 2020, the southwest coast received 14.72 inches of rainfall, 66% of average, for a deficit of -7.64 inches. Additionally, the U.S. Drought Monitor report, published on April 14, 2020, indicates that Lee County remains in "Moderate Drought." The rainfall deficit has led to decreased surface and groundwater levels in Lee County.

11. Groundwater levels at most monitoring stations in Lee County have continued to decline over the last 7 days, reporting low levels compared to historical averages. U.S. Geological Survey (USGS) well L-2194, a Lower Tamiami aquifer well in Bonita Springs, decreased to -0.86 feet NGVD. In Lehigh Acres, USGS well L-2186, a Sandstone aquifer well, decreased -1.05 feet to -0.95 feet NGVD. USGS well L-2195, a Surficial aquifer well also in Bonita Springs, decreased -0.13 feet.

12. The largest decrease in the Mid Hawthorn aquifer was at USGS well L-4820, located in North Cape Coral, reaching an all-time low of -82.61 feet NGVD, and within 6 feet of the maximum developable limit.²

² The maximum developable limit, as set forth in Section 3.9.3 of the Applicant's Handbook for Water Use Permit Applications within the District (09/07/2015), is incorporated by referenced in Rule 40E-2.091, Florida Administrative Code.

13. The current rainfall deficit, extreme heat, and decreasing surface and groundwater levels are expected to continue throughout the remainder of the dry season.

14. Portions of Lee County are rural and are solely reliant on groundwater withdrawals, having no reliable water supply available from a public utility. Specifically, Lehigh Acres and North Cape Coral depend on the Sandstone and Mid-Hawthorn aquifers, respectively, for their domestic self-water supply.

15. Lee County Natural Resources Division reported multiple domestic self-supply wells have gone dry because of low groundwater levels, requiring the need to replace wells and/or pumps, and without more stringent measures, additional economic impacts are likely to occur.

16. District staff reviewed the current conditions of the water resources, the present and anticipated water demands, and the present and anticipated water supply. Given the extreme heat, dry conditions, ongoing rainfall deficit, decreasing groundwater levels and anticipated increased water demands during these dry times, the imposition of Modified Phase I Water Shortage Restrictions on agriculture, nursery, and golf course uses, and Modified Phase III Water Shortage Restrictions on landscape irrigation and recreation area uses, using surface and groundwater within Lee County is necessary to avoid serious harm and equitably distribute the available water supply.

17. District staff consulted with staff from Lee County, the City of Cape Coral, and other municipalities before the execution of this Order.

18. District staff will continue to monitor water usage and water levels given the pending onset of the wet season and to assess the effectiveness of the implemented water conservation measures and mandatory restrictions. District staff recognize that if

water conditions improve, water shortage restrictions can be relaxed or, conversely, the potential for increased or additional water shortage restrictions.

19. The District acknowledges the ongoing public health emergency in the State of Florida (State), and the larger health, safety, and economic impacts experienced by the general public and District stakeholders as a result of COVID-19. On April 1, 2020, Governor DeSantis signed Executive Order 20-91 increasing the importance of a reliable source of water for homes with private wells. Before recommending this Order, District staff evaluated the ongoing impacts of COVID-19 and the State's future recovery along with its monitoring of present and anticipated water resource conditions.

CONCLUSIONS OF LAW

20. The District's water shortage plan regulating the withdrawal and use of water and protection of the water resources is set forth in Chapter 40E-21, Florida Administrative Code. See § 373.246, Fla. Stat. (2020).

21. In accordance with the water shortage plan, the District may impose restrictions on one or more water use classes to protect the water resources within an area from serious harm. § 373.246(3), Fla. Stat. (2020).

22. The District may declare a water shortage to equitably distribute water supply through the implementation of the District's water shortage plan, in Chapter 40E-21, Florida Administrative Code. Fla. Admin. Code R. 40E-21.231.

23. The District may increase water resource and demand monitoring pursuant to Rule 40E-21.401, Florida Administrative Code.

24. The restrictions contained in Part V, Specific Restrictions, Chapter 40E-21, Florida Administrative Code, are general water use restrictions. Fla. Admin. Code R. 40E-

21.271. The District may implement any combination of restrictions for each affected source class, in lieu of or in addition to the restrictions listed in Part V, Specific Restrictions, Chapter 40E-21, Florida Administrative Code. Fla. Admin. Code R. 40E-21.271(2).

25. The District recognizes the serious threat to public health, safety, and welfare posed by COVID-19, and the public health emergency posing a risk to the entire State. This Order does not prevent the full implementation of recommendations from the Centers for Disease Control and the Florida Department of Health, and should be applied in conjunction with all Executive Orders issued by the Governor of Florida and the current state of emergency posed by COVID-19.

26. Based on the cumulative assessment of rainfall deficit, the surface and groundwater availability, current water demands, and the climate forecast, there is a significant potential that sufficient water will not be available to meet anticipated future demands without the imposition of mandatory water use restrictions.

27. Considering the findings above and Rules 40E-21.521 and 40E-21.541, Florida Administrative Code, the Executive Director finds it necessary to impose Modified Phase I Water Shortage Restrictions on agriculture, nursery, and golf course uses, and Modified Phase III Water Shortage Restrictions on landscape irrigation and recreation area uses, using surface and groundwater within Lee County.

28. The District may request officials in Lee County assist the District in the enforcement of this Order. See § 373.609, Fla. Stat. (2020).

ORDER

Based upon the findings above, the Executive Director orders that:

29. An Order implementing Modified Phase I Water Shortage Restrictions is issued for agriculture, nursery, and golf course uses withdrawing surface and groundwater within Lee County. An Order implementing Modified Phase III Water Shortage Restrictions is issued for landscape irrigation and recreation area uses withdrawing surface and groundwater within Lee County.

30. Permitted and exempt landscape irrigation users within Lee County, except permitted and exempt users within the City of Cape Coral, shall comply with the landscape irrigation restrictions contained in Exhibit B, attached and incorporated within this Order.

31. Permitted and exempt landscape irrigation users within the City of Cape Coral shall comply with the landscape irrigation restrictions contained in Exhibit C, attached and incorporated within this Order.

32. Golf course users and athletic turf fields within Lee County shall implement a management plan that reduces the total irrigation by 15% of their monthly allocation, derived from the AFSIRS calculation. Actual pumpage shall be reported on a weekly basis to the District's water shortage website available at www.sfwmd.gov. Reporting for the preceding week is due by noon every Monday.

33. Recreation area users, except for athletic turf fields, within Lee County shall comply with the restrictions contained in Exhibit D, attached and incorporated into this Order.

34. Agriculture users within Lee County shall comply with the restrictions contained in Exhibit E, attached and incorporated into this Order.

35. Nursery users within Lee County shall comply with the restrictions contained in Exhibit F, attached and incorporated into this Order.

36. Permitted users shall continue submitting water usage monitoring data in accordance with permit conditions. The Water Use Bureau Chief or Water Use Bureau Chief's designee is authorized to make written requests to permitted users, whose permit conditions require the submittal of water usage monitoring, to provide additional data or increase the frequency of submittals, as deemed appropriate.

37. A user may request relief from this Order by filing an application for variance under Rule 40E-21.275, Florida Administrative Code. The user must meet the imposed restrictions until the Governing Board or Executive Director grants a variance.

38. Any variance from this Order shall expire upon declaration by the District that a water shortage in the affected area no longer exists, rescinding this Order, or when more restrictive water use declaration is imposed (unless otherwise provided in the water shortage order).

39. This Order shall become effective on April 25, 2020, and shall remain in effect until modified or rescinded by the Governing Board, Executive Director, or the Executive Director's designee, if the circumstances in subsection 40E-21.291(5), Florida Administrative Code, are present.

40. A Notice of Rights is attached as Exhibit G.

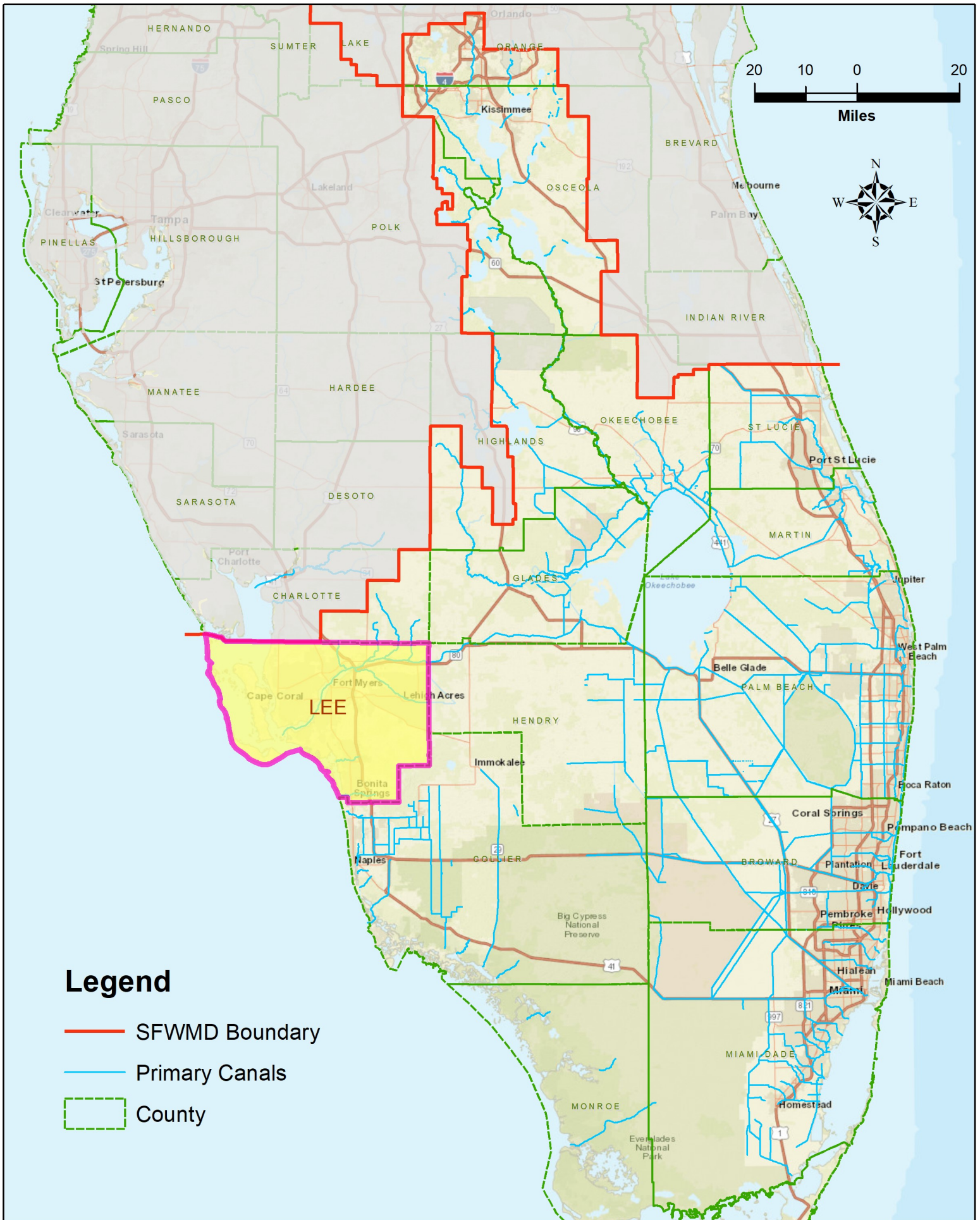
DONE AND SO ORDERED in West Palm Beach, Florida, on this 22nd day of April 2020.

SOUTH FLORIDA WATER
MANAGEMENT DISTRICT
By its Executive Director



Drew Bartlett

Water Restrictions for South Florida Water Management District



**Modified Phase III Restrictions for Landscape Irrigation Uses
Within Lee County, Not Including the City of Cape Coral**

1. All wasteful and unnecessary water use is prohibited.
2. Those entities utilizing 100% reclaimed water are not restricted. However, reclaimed water providers may have local restrictions in place.
3. Low volume irrigation, i.e., drip irrigation and microjet irrigation, shall be voluntarily reduced.
4. Hand watering of existing landscape utilizing a self-canceling nozzle is allowed anytime for no more than 10 minutes per area for stress relief or to prevent plant die-off.
5. Landscape irrigation users located in Lee County, except for the City of Cape Coral, are prohibited from irrigating between the hours of 9:00 a.m. and 5:00 p.m.
6. Landscape irrigation for existing installations is limited to one day per week as set forth below:
 - a. Even-numbered addresses, installations with irrigation systems that irrigate both even and odd-numbered addresses within the same zones, such as multi-family units and homeowners' associations, and rights-of-way or other locations with no address, shall accomplish necessary landscape irrigation only on Sunday.
 - b. Odd-numbered addresses shall accomplish any necessary landscape irrigation only on Wednesday.
7. Irrigation of new landscaping, installations which have been in place for less than 30 days, is:
 - a. Restricted to the hours of 4:00 a.m. to 9:00 a.m., Monday, Wednesday, and Saturday for less than 5 irrigated acres.

b. Restricted to the hours of 12:01 a.m. to 9:00 a.m., Monday, Wednesday, and Saturday for equal to or more than 5 irrigated acres.

8. Water use for cleaning, adjusting, or repairing irrigation systems is:

a. Restricted to 10 minutes per zone, per week, for existing irrigation systems.

b. Restricted to 10 minutes per zone on a one-time basis, for new irrigation systems.

**Modified Phase III Restrictions for Landscape Irrigation Uses
Within the City of Cape Coral**

1. All wasteful and unnecessary water use is prohibited.
2. Low volume irrigation, i.e., drip irrigation and microjet irrigation, shall be voluntarily reduced.
3. Hand watering of existing landscape utilizing a self-canceling nozzle is allowed anytime for no more than 10 minutes per area for stress relief or to prevent plant die-off.
4. Landscape irrigation for existing installations is limited to one day per week as set forth below.
 - a. For existing installations less than 5 irrigated acres, landscape irrigation shall be restricted for all types of irrigation, as set forth below:
 - i. Installations with an address that ends in 0 shall be permitted to irrigate on Monday from 12:00 a.m. to 4:00 a.m.
 - ii. Installations with an address that ends in 1 shall be permitted to irrigate on Friday from 4:00 a.m. to 8:00 a.m.
 - iii. Installations with an address that ends in 2 shall be permitted to irrigate on Thursday from 12:00 a.m. to 4:00 a.m.
 - iv. Installations with an address that ends in 3 shall be permitted to irrigate on Wednesday from 12:00 a.m. to 4:00 a.m.
 - v. Installations with an address that ends in 4 shall be permitted to irrigate on Sunday from 12:00 a.m. to 4:00 a.m.
 - vi. Installations with an address that ends in 5 shall be permitted to irrigate on Saturday from 12:00 a.m. to 4:00 a.m.

vii. Installations with an address that ends in 6 shall be permitted to irrigate on Thursday from 4:00 a.m. to 8:00 a.m.

viii. Installations with an address that ends in 7 shall be permitted to irrigate on Wednesday from 4:00 a.m. to 8:00 a.m.

ix. Installations with an address that ends in 8 shall be permitted to irrigate on Sunday from 4:00 a.m. to 8:00 a.m.

x. Installations with an address that ends in 9 shall be permitted to irrigate on Saturday from 4:00 a.m. to 8:00 a.m.

b. Existing installations with no address, or which irrigate both odd and even-numbered addresses, including multi-family units, shall be permitted to irrigate on Monday from 4:00 a.m. to 8:00 a.m.

c. Existing installations equal to or more than 5 irrigated acres, including those which irrigate both odd and even-numbered addresses, such as multi-family units, shall be permitted to irrigate on Monday from 12:00 a.m. to 8:00 a.m.

5. Watering of new lawns and landscaping during a 45-day establishment period shall be permitted on any day of the week from 2:00 a.m. to 8:00 a.m.

Modified Phase III Restrictions for Recreation Area Uses Within Lee County

1. All wasteful and unnecessary water use is prohibited.
2. Those entities utilizing 100% reclaimed water are not restricted. However, reclaimed water providers may have local restrictions in place.
3. Low volume irrigation, i.e., drip irrigation and microjet irrigation, shall be voluntarily reduced.
4. Hand watering of existing landscape utilizing a self-canceling nozzle is allowed anytime for no more than 10 minutes per area for stress relief or to prevent plant die-off.
5. Recreation area users are prohibited from irrigating between the hours of 9:00 a.m. and 5:00 p.m.
6. Irrigation for existing installations is limited to one day per week as set forth below:
 - a. Even-numbered addresses, installations with irrigation systems that irrigate both even and odd-numbered addresses within the same zones, such as multi-family units and homeowners' associations, and rights-of-way or other locations with no address, shall accomplish necessary irrigation only on Sundays.
 - b. Odd-numbered addresses shall accomplish any necessary irrigation only on Wednesdays.
7. Irrigation of new landscaping, installations which have been in place for less than 30 days, is
 - a. Restricted to the hours of 4:00 a.m. to 9:00 a.m., Monday, Wednesday, and Saturday for less than 5 irrigated acres.

b. Restricted to the hours of 12:01 a.m. to 9:00 a.m., Monday, Wednesday, and Saturday for equal to or more than 5 irrigated acres.

8. Water use for cleaning, adjusting, or repairing irrigation systems is:

a. Restricted to 10 minutes per zone, per week, for existing irrigation systems.

b. Restricted to 10 minutes per zone on a one-time basis, for new irrigation systems.

9. Irrigation of seeded and/or sprigged recreation areas that have been in place for less than 30 days shall be allowed daily for 10 minutes per irrigation zone from 11:30 a.m. to 12:00 p.m., 1:30 p.m. to 2:00 p.m., and 3:30 p.m. to 4:00 p.m.

10. Watering of pervious non-vegetated recreational/sporting surfaces shall be restricted to 10 minutes of application prior to each recreation/sporting event. Low volume watering shall be used.

Modified Phase I Restrictions for Agriculture Uses Within Lee County

1. All agricultural irrigation systems shall be operated in a manner that will maximize the percentage of water withdrawn and held in the root zone of the crop and will minimize the amount of water that is withdrawn and released or lost to the user, but not immediately available for other users.
2. Agricultural operations having access to more than one water source shall maximize the use of the lesser or least restricted water source.
3. Agricultural operations which use overhead irrigation shall be restricted during the hours of 2:00 p.m. to 10:00 a.m.
4. Livestock water use shall be voluntarily reduced.
5. Aquaculture water use shall be voluntarily reduced.
6. Soil flooding for vegetable seed planting, rice planting, burning of sugar cane prior to harvest, and to permit the harvesting of sod, shall be voluntarily reduced. Soil flooding for other purposes is prohibited.
7. Low volume irrigation shall not be restricted.

Modified Phase I Restrictions for Nursery Uses Within Lee County

1. All wasteful and unnecessary water use is prohibited.
2. Inside overhead irrigation uses shall be allowed between the hours of 7:00 a.m. to 7:00 p.m., 7 days per week.
3. Outside overhead irrigation uses shall be allowed between the hours of 7:00 p.m. to 7:00 a.m., 7 days per week.
4. Overhead irrigation for containerized nursery stock and moisture stress reduction on stock growing in containers up to and including 1 gallon shall be allowed daily for 10 minutes per irrigation zone from 11:30 a.m. to 12:00 p.m., 1:30 p.m. to 2:00 p.m., and 3:30 p.m. to 4:00 p.m.
5. Flooding irrigation systems shall be restricted to 8 days per month.
6. Low volume irrigation uses and low volume hand watering shall be voluntarily reduced.

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 AN 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 28106.111 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.