

4:13 pm Nov 21, 2023

BEFORE THE GOVERNING BOARD OF THE
SOUTH FLORIDA WATER MANAGEMENT DISTRICT

SOUTH FLORIDA
WATER MANAGEMENT DISTRICT

SFWMD 2023-062 DAO WS

IN THE MATTER OF:

Declaration of Water Shortage
Warning for All Water Use Classes
Withdrawing Groundwater in Lee and
Collier Counties.

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DECLARATION OF WATER SHORTAGE WARNING

The Governing Board of the South Florida Water Management District ("District"), after considering the recommendations of District staff and being otherwise fully apprised, issues this Order pursuant to Sections 373.083, and 373.246, Florida Statutes ("Fla. Stat."), and Chapter 40E-21, Florida Administrative Code ("Fla. Admin. Code"), based upon the following Findings of Fact and Conclusions of Law.

AREA OF APPLICATION

1. The portions of Lee and Collier counties, located in the District's Lower West Coast Planning area, are subject to this Order. A map depicting the area governed by this Order is attached as **Exhibit A**.
2. Water from all groundwater aquifers, as described in subsection 40E-21.631(2), Fla. Admin. Code, are affected by this Order.
3. All water use classes identified in Rule 40E-21.651, Fla. Admin. Code are subject to this Order.

FINDINGS OF FACT

4. Since January 1, Lee and Collier counties have received 42.68 inches of rainfall, resulting in a rainfall deficit of 12.46 inches, which represents 77 percent of normal rainfall.

5. The hydrologic wet season runs from June 1st to October 31st. Since June 1, 2023, both Lee and Collier counties have only received 29.34 inches of rainfall, resulting in a rainfall deficit of 11.86 inches, which is below normal.

6. The U.S. Drought Monitor publishes a weekly drought condition report. The November 16, 2023, report indicated that the Lower West Coast is in an Abnormally Dry to Moderate Drought.

7. Groundwater levels have been declining in most of the Lower West Coast monitoring stations. Without significant rainfall, further decline in ground water levels is anticipated due to increased irrigation demands and evaporation losses that typically occur in the dry season.

8. Considering the above, it is imperative that conservation of groundwater sources within Lee and Collier Counties be implemented. Water supplies over the remainder of the dry season may decline to the extent that sufficient water will not be available to meet the present and anticipated requirements of water users while also protecting the water resources from serious harm.

9. District staff will continue to monitor water usage and groundwater levels to assess the effectiveness of voluntary water conservation measures taken by water users in Lee and Collier Counties. If the voluntary conservation efforts prove to be insufficient,

the District may declare a water shortage and invoke mandatory water use restrictions to equitably distribute the remaining groundwater supplies and prevent serious harm to the water resources.

CONCLUSIONS OF LAW

10. The District's Water Shortage Plan, as set forth in Chapter 40E-21, Fla. Admin. Code, regulates the withdrawal and use of groundwater and the protection of water resources. See § 373.246, Fla. Stat.

11. Under Rule 40E-21.231(3), Fla. Admin. Code, the District may issue a water shortage warning calling for voluntary reductions in demand prior to declaring a water shortage.

12. Under Rule 40E-21.401, Fla. Admin. Code, the District may increase water resource and demand monitoring in anticipation of a water shortage.

13. This declaration of a water shortage warning is prudent to provide notice to water users in Lee and Collier Counties of the potential for future water use restrictions and to encourage voluntary water conservation and increased use of alternative water sources.

14. In the event water use restrictions are imposed in the future, the Governing Board may request local city and county officials to assist the District in the enforcement of this order. See § 373.609, Fla. Stat.

ORDER

Based on the above findings of fact and conclusions of law, it is ordered that:

15. A water shortage warning is declared for all users withdrawing groundwater within Lee and Collier counties.

16. All water users are encouraged to practice efficient water use in the following ways.

- a. Landscape Irrigation: All landscape irrigation shall continue to be conducted on assigned days or less often, as established in the local government's year-round landscape irrigation ordinance. The most effective way to reduce unnecessary water demand is to limit landscape irrigation by watering only on assigned irrigation days and when plants show signs of stress (i.e., wilting).
- b. During the cooler winter months, lawns do not need to be irrigated as frequently as summer months. For most times, one day per week of irrigation is sufficient to maintain a healthy landscape.
- c. Check irrigation systems to ensure they are working properly. This means testing and repairing broken pipes and leaks, fixing damaged or tilted sprinkler heads, and checking the irrigation timers to ensure settings are correct and the rain sensor is working properly.
- d. Avoid washing or cleaning streets, sidewalks, driveways, or other impervious areas with water.
- e. Use a self-cancelling nozzle when hand-watering shrubs or landscaping, and when washing vehicles. Vehicles should be washed over a pervious surface, like grass, or in an area that immediately drains to a pervious surface.
- f. When utilizing water indoors, reduce shower durations, minimize the number of laundry loads, and only run dishwashers when full.

- g. Golf courses, nurseries, agriculture, and other users are encouraged to increase water conservation efforts and reduce demands where possible.
- h. All Water users should follow proper conservation techniques and practices. All water users can visit <https://www.sfwmd.gov/community-residents/water-conservation> to access water conservation tips and information.

17. The District requests local governments through their media outlets to increase outreach and education on the dry conditions and low water availability and promote awareness and compliance with local landscape irrigation ordinances.

18. The Executive Director is delegated the authority to issue, modify, and rescind this water shortage warning Order. The Executive Director will modify or rescind this Order if the District's water conditions monitoring, and water shortage plan implementation reasonably demonstrates that a modification or recission of the Order is necessary.

19. A Notice of Rights is attached hereto as **Exhibit B**.

DONE AND SO ORDERED in West Palm Beach, Florida on this 21st day of November, 2023.

SOUTH FLORIDA WATER
MANAGEMENT DISTRICT
By its Executive Director



Drew Bartlett

EXHIBIT A

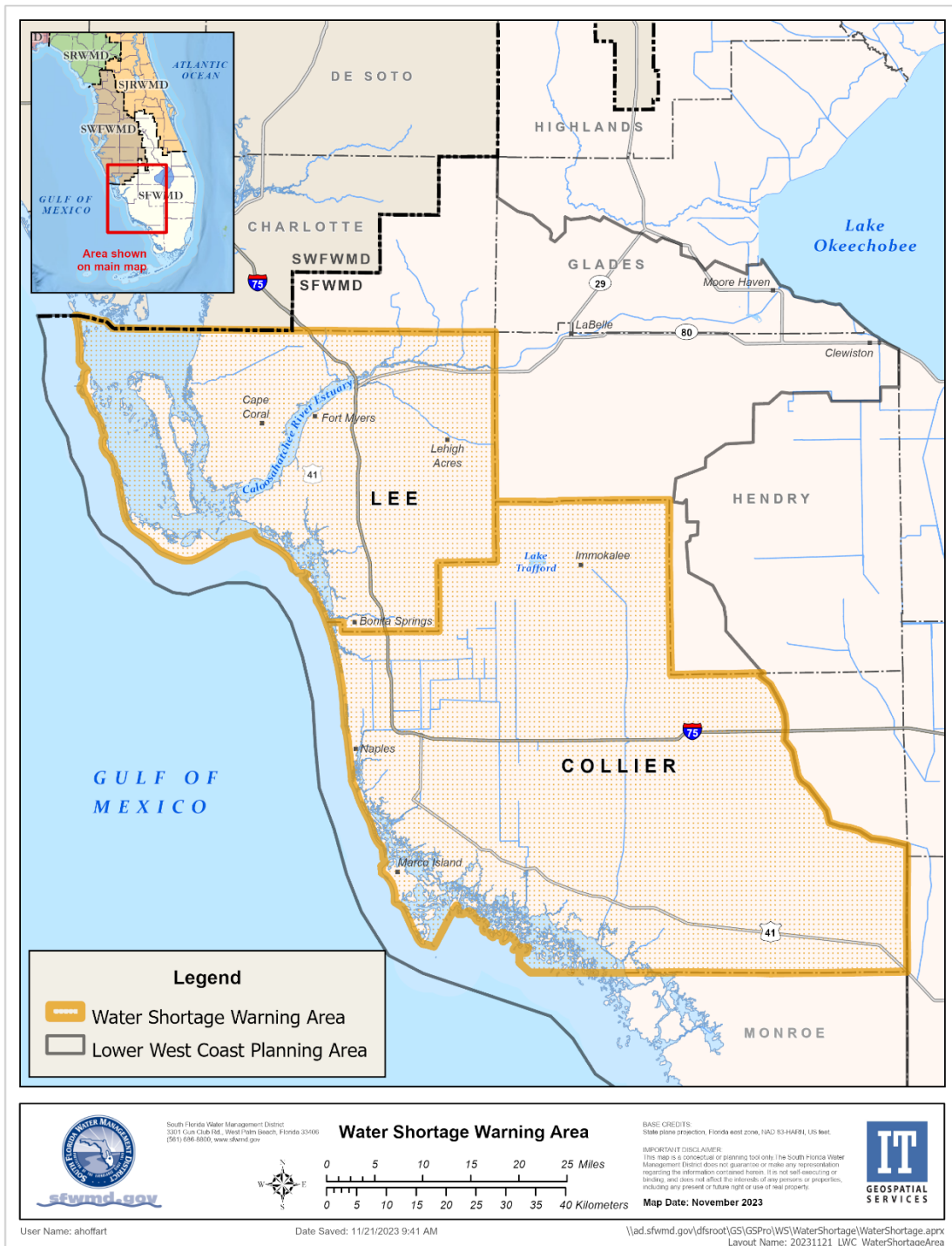


EXHIBIT B

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 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.