

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

Order No.: 2025-039-DAO-WS

IN RE:

Rescission of Order No. 2023-063-DAO-WS and Imposition of Modified Phase IV Water Shortage Restrictions for the Recreation Area, Landscape Irrigation, Nursery, and Aesthetic Use Classes Withdrawing Groundwater from the Mid-Hawthorn Aquifer Within Northeastern Cape Coral and a Portion of Unincorporated Lee County.

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**RECEIVED  
DISTRICT CLERK'S OFFICE**

12:05 pm May 2, 2025

**SOUTH FLORIDA  
WATER MANAGEMENT DISTRICT**

*oMB*

**ORDER RESCINDING PHASE III RESTRICTIONS AND IMPOSING MODIFIED  
PHASE IV CRITICAL WATER SHORTAGE RESTRICTIONS**

The Executive Director of the South Florida Water Management District (“District”), after considering the recommendations of District staff and being otherwise fully apprised of the matter, issues this Modified Phase IV water shortage order (“Order”) pursuant to sections 373.083, 373.175, 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 area subject to this Order is the northeastern portion of the City of Cape Coral and a portion of unincorporated Lee County, Florida (“northeastern Cape Coral”) located in the District’s Lower West Coast (“LWC”) Planning Region, generally bounded by Gator Slough Canal to the north, NE 24th Ave and Garden Blvd to the east, Pine Island Road to the south, and Nelson Rd N to the west. A map depicting the area governed by this Order is attached as **Exhibit A** and incorporated into this Order.

2. The source of water affected by this Order is groundwater in the mid-Hawthorn aquifer, as defined in subsection 40E-8.021(14), Fla. Admin. Code, in northeastern Cape Coral.

3. The use classes impacted by this Order include the recreation area,<sup>1</sup> landscape irrigation,<sup>2</sup> nursery,<sup>3</sup> and aesthetic use<sup>4</sup> classes utilizing the mid-Hawthorn aquifer as a water source.

### **FINDINGS OF FACT**

4. On November 28, 2023, the District's Executive Director issued Emergency Water Shortage Order No. 2023-063-DAO-WS ("Emergency Order"), declaring an emergency water shortage and imposing Modified Phase III water restrictions due to the decline in water levels in United States Geological Survey ("USGS") monitor well L-4820 ("well L-4820"), located in northeastern Cape Coral. The Emergency Order imposed restrictions on the recreation area, golf course, landscape irrigation, nursery, and agricultural use classes withdrawing groundwater from the mid-Hawthorn aquifer within northeastern Cape Coral.<sup>5</sup>

5. On December 18, 2023, the Governing Board issued Order No. 2023-065-DAO-WS, concurring with the Executive Director's Emergency Order imposing Modified Phase III water restrictions in northeastern Cape Coral.<sup>6</sup>

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<sup>1</sup> Paragraph 40E-21.651(3)(d), Fla. Admin. Code.

<sup>2</sup> Paragraphs 40E-21.651(3)(b) and (c), Fla. Admin. Code.

<sup>3</sup> Paragraph 40E-21.651(3)(a), Fla. Admin. Code.

<sup>4</sup> Paragraph 40E-21.651(4)(e), Fla. Admin. Code

<sup>5</sup> A copy of Order No. 2023-063-DAO-WS is available from the District Clerk via email at [clerk@sfwmd.gov](mailto:clerk@sfwmd.gov).

<sup>6</sup> A copy of Order No. 2023-065-DAO-WS is available from the District Clerk via email at [clerk@sfwmd.gov](mailto:clerk@sfwmd.gov).

6. District staff has continued to monitor the conditions in the mid-Hawthorn aquifer and the needs of the water users as required by Rule 40E-21.221, Fla. Admin. Code.

7. Since the effective date of Emergency Order No. 2023-063-DAO-WS, the levels in the mid-Hawthorn aquifer have continued to decline.

8. Despite receiving 134% of average rainfall during the 2024 wet season, minimal groundwater level rebound has occurred in well L-4820.

9. Record low water levels are being set weekly in well L-4820. These conditions are expected to continue through the dry season,<sup>7</sup> resulting in further anticipated declines in groundwater elevations. The historical hydrograph for well L-4820 is shown in **Exhibit B** and incorporated into this Order.

10. The U.S. Drought Monitor publishes a weekly drought conditions report. The May 1, 2025, report indicates that the Cape Coral area is in a “Severe Drought” Condition.

11. As of May 1, 2025, the current groundwater level in well L-4820 is at –93.61 feet North American Vertical Datum (“NAVD”). This groundwater level is less than 10 feet from the structural top of the aquifer, which is the minimum flow and level (“MFL”) set for

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<sup>7</sup> The hydrologic dry season runs from November 1st through May 31st. During these dry times, water demands from users typically increase to meet the supplemental irrigation needs of crops, nurseries, landscaping, golf courses, etc. These additional water demands further reduce available supplies and lower the groundwater levels.

the mid-Hawthorn aquifer.<sup>8</sup> Therefore, immediate action must be taken to prevent serious harm<sup>9</sup> to the aquifer.

12. In light of the above factors, conservation of groundwater sources in the mid-Hawthorn aquifer and mandatory water restrictions must be immediately implemented. Without these restrictions, there is considerable potential for water levels over the remainder of the dry season to decline, resulting in insufficient water to protect the integrity of the aquifer.

13. District staff will continue to monitor water usage and groundwater levels to assess the effectiveness of this Order. Invoking mandatory water use restrictions is intended to equitably distribute the remaining water supplies and prevent serious harm to the groundwater resources.

#### **CONCLUSIONS OF LAW**

14. The Governing Board of the District is authorized by sections 373.175 and 373.246, Fla. Stat., as well as Chapter 40E-21, Fla. Admin. Code., to issue orders declaring the existence of a water shortage within all or part of the District, and to impose such restrictions as may be necessary to reduce demand on available water supplies.

15. Pursuant to section 373.083(5), Fla. Stat., the Governing Board is authorized to delegate its powers or duties to the Executive Director. On April 10, 2025,

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<sup>8</sup> Pursuant to Rule 40E-8.331, Fla. Admin. Code, the minimum level for the mid-Hawthorn aquifer is set at the structural top of the aquifer, which is located at -103 feet NAVD. Given the current water level at USGS monitoring well L-4820 is -93.61 feet NAVD, an MFL violation for the mid-Hawthorn aquifer will occur should levels continue to decline another 9.4 feet, below the structural top of the aquifer.

<sup>9</sup> Paragraph 40E-8.021(30), Fla. Admin. Code., defines “serious harm” as the long-term loss of water resource functions, as addressed in Chapters 40E-21 and 40E-22, F.A.C., resulting from a change in surface or ground water hydrology.

the District's Governing Board adopted Resolution No. 2025-0409, delegating its authority to issue a Phase IV water shortage order to the District's Executive Director under certain specified circumstances. A copy of Resolution No. 2025-0409 is attached as **Exhibit C**.

16. The District may declare and implement water shortage restrictions on one or more use classes through its water shortage plan.<sup>10</sup> The District's water shortage plan regulates the withdrawal of water and further protects the water resources from serious harm.<sup>11</sup>

17. The specific restrictions contained in Part V of Rule 40E-21.551, Fla. Admin. Code, are water use restrictions that may be ordered during a declared "Phase IV critical water shortage."<sup>12</sup> In addition to these restrictions, the Executive Director may order such other provisions or restrictions as are necessary to protect the water resources from serious harm.<sup>13</sup>

18. Rule 40E-21.401, Fla. Admin. Code, as well as consumptive use permitting conditions, authorize the District to obtain monitoring data concerning water usage.

19. The District has monitored the conditions in the mid-Hawthorn aquifer and the needs of the users as required by Rule 40E-21.221, Fla. Admin. Code.

20. Based on the cumulative assessment of rainfall deficit, the groundwater availability, current water demands, and the climate forecast, there is a significant potential that there will be insufficient water available to meet anticipated future demands and simultaneously protect the resource from serious harm.

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<sup>10</sup> See Rules 40E-21.011, 40E-21.231, and 40E-21.291, Fla. Admin. Code.

<sup>11</sup> See Chapter 40E-21, Fla. Admin. Code *and* § 373.246, Fla. Stat.

<sup>12</sup> See subsections 40E-21.551(1)-(4), Fla. Admin. Code.

<sup>13</sup> See paragraph 40E-21.271(3)(j), Fla. Admin. Code.

21. Considering the above Findings of Fact, the Executive Director finds it necessary to rescind the Modified Phase III water shortage restrictions and impose Modified Phase IV water shortage restrictions on recreation area, landscape irrigation, nursery, and aesthetic use classes that utilize groundwater from the mid-Hawthorn aquifer within northeastern Cape Coral.

### **ORDER**

Pursuant to SFWMD Resolution No. 2025-0409, sections 373.083(5), 373.175, and 373.246, Fla. Stat., and Chapter 40E-21, Fla. Admin Code., and based upon the above Findings of Fact and Conclusions of Law, the Executive Director orders that:

22. Emergency Water Shortage Order No. 2023-63-DAO-WS, imposing Modified Phase III water shortage restrictions, is rescinded.

23. Modified Phase IV water shortage restrictions are imposed for landscape irrigation, recreation area, nursery, and aesthetic use classes that utilize groundwater from the mid-Hawthorn aquifer within the area identified by **Exhibit A** in northeastern Cape Coral.

24. Permitted and domestic irrigation users shall comply with the landscape irrigation restrictions contained in **Exhibit D**, which is attached and incorporated into this Order.

25. Restrictions for the recreation area use class are contained in **Exhibit E**, which is attached and incorporated into this Order.

26. Restrictions for the nursery use class are contained in **Exhibit F**, which is attached and incorporated into this Order.

27. Restrictions for the aesthetic use class are contained in **Exhibit G**, which is attached and incorporated into this Order.

28. Permitted users shall continue submitting water usage monitoring data in accordance with permit conditions. The Water Use Bureau Chief or its 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.

29. All users subject to the restrictions imposed by this Order may request relief from this Order by filing an application for variance pursuant to section 120.542, Fla. Stat., and Rule 40E-21.275, Fla. Admin. Code. The user must meet the imposed restrictions within this Order until the Governing Board or Executive Director grants the requested variance.

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

31. Persons whose substantial interests are affected by this Order shall have the right, pursuant to Chapter 120, Fla. Stat., and as stated in the Notice of Rights, to petition for an administrative hearing. A notice of rights is attached hereto as **Exhibit H**.

32. The District requests that the local officials in Cape Coral and Lee County assist the District in the implementation and enforcement of this Order within their

respective jurisdictional areas.<sup>14</sup> District staff will coordinate with the local governments in implementing such enforcement measures.

33. This Order rescinding Modified Phase III water shortage restrictions and imposing Modified Phase IV water shortage restrictions shall become effective on May 2, 2025, 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), Fla. Admin. Code., are present.

**DONE AND SO ORDERED** in West Palm Beach, Florida on this 2nd day of May, 2025.

SOUTH FLORIDA WATER  
MANAGEMENT DISTRICT  
By its Executive Director



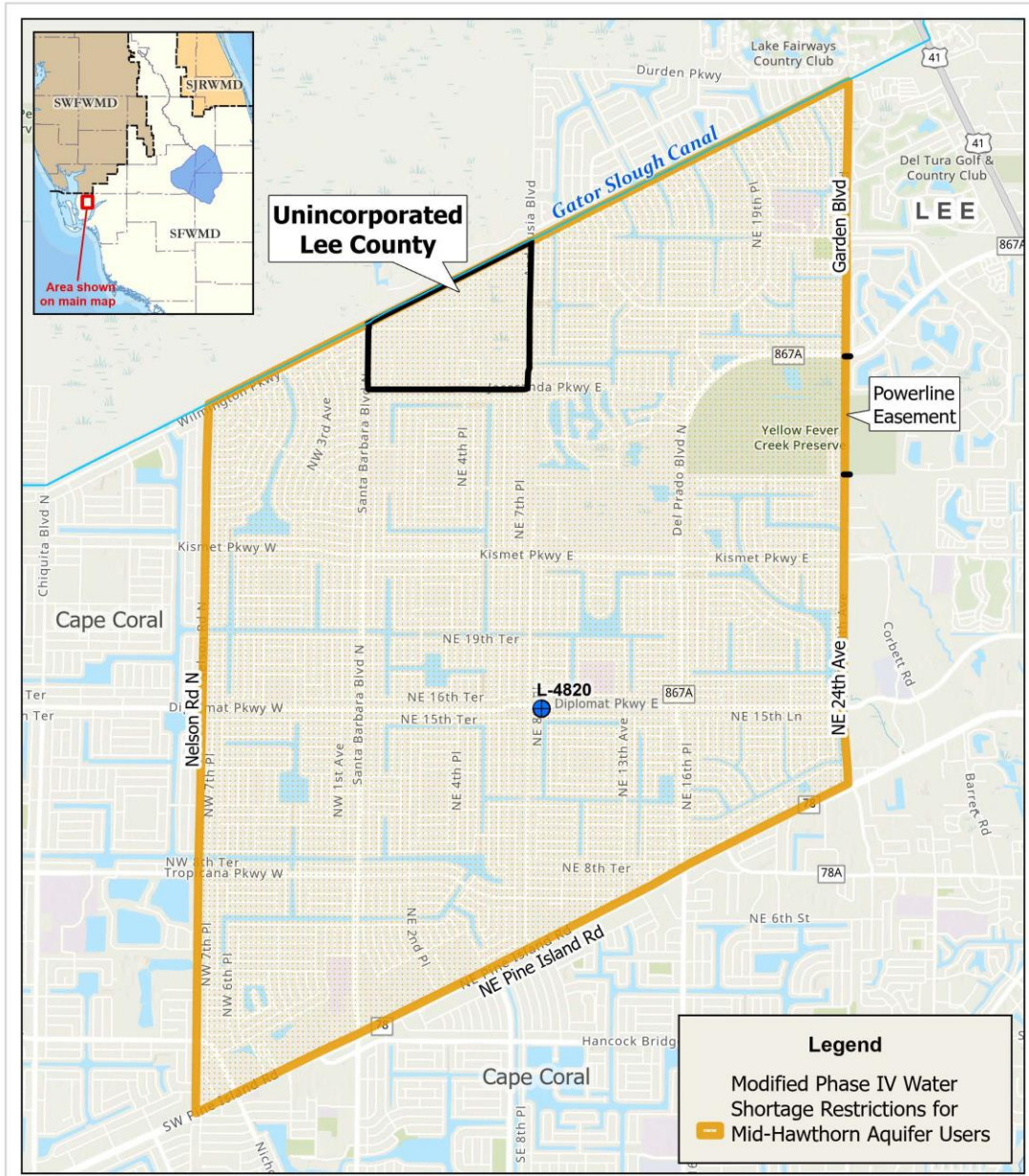
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Drew Bartlett


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<sup>14</sup> See subsection 40E-21.421(1), Fla. Admin. Code.



# EXHIBIT A






**Modified Phase IV Water Shortage Restrictions for Mid-Hawthorn Aquifer Users**

South Florida Water Management District  
3301 Sun Club Rd., West Palm Beach, Florida 33406  
(561) 688-8900, www.sfwmd.gov

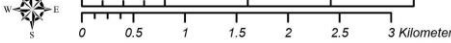
BASE CREDITS:  
State plane projection, Florida east zone, NAD 83-HARR, US feet.

IMPORTANT DISCLAIMER:  
This map is a conceptual or planning tool only. The South Florida Water Management District does not guarantee or make any representation regarding the information contained herein. It is not self-executing or binding, and does not affect the interests of any persons or properties, including any present or future right or use of real property.

**April 2025**



**GEOSPATIAL SERVICES**



User Name: ahoffart

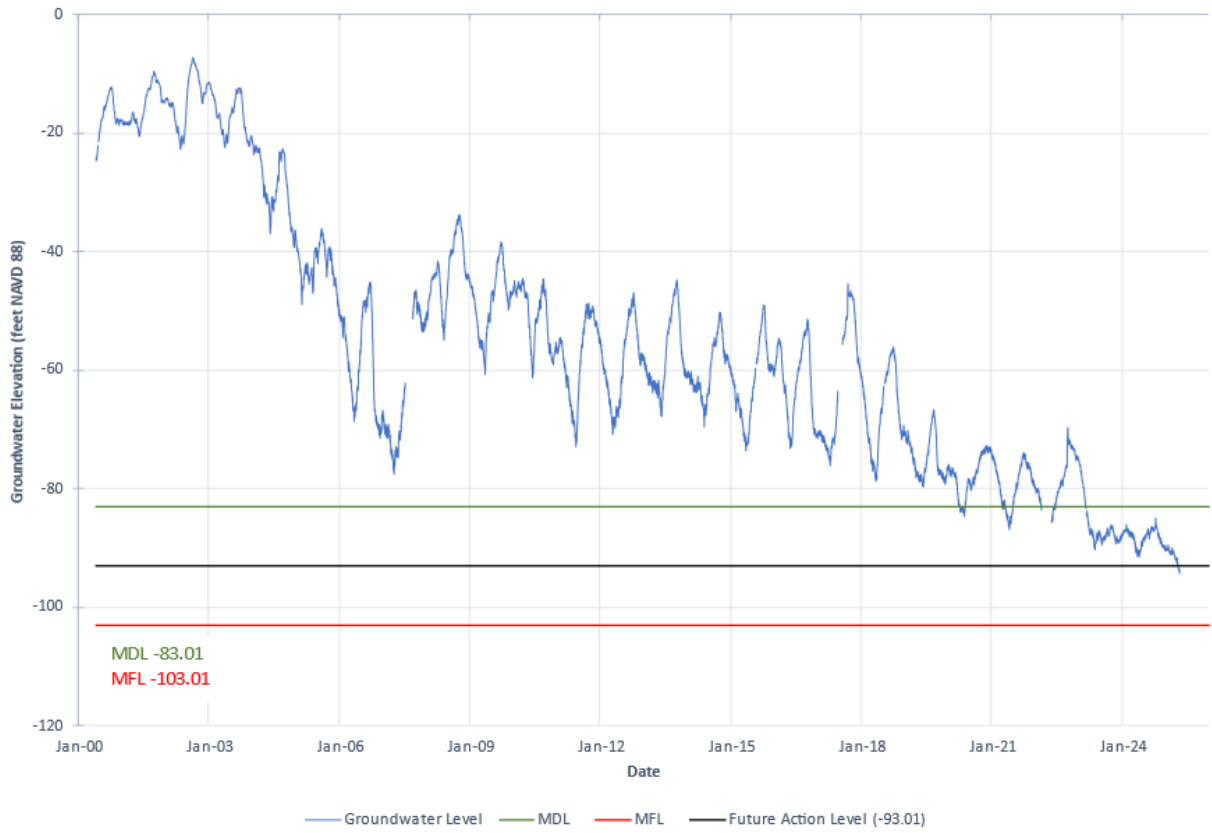
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# EXHIBIT B

## Cape Coral Mid-Hawthorn Well L-4820

5/2/2025



## EXHIBIT C

### SOUTH FLORIDA WATER MANAGEMENT DISTRICT

Resolution No. 2025 - 0409

**A Resolution of the Governing Board of the South Florida Water Management District to delegate to the Executive Director the authority to issue a water shortage order and impose modified Phase IV restrictions in the northeast portion of Cape Coral when certain hydrological conditions in the Mid-Hawthorn Aquifer are present; providing an effective date.**

**WHEREAS**, Section 373.175, Florida Statutes and Chapter 40E-21, Florida Administrative Code ("F.A.C."), authorizes the Governing Board to declare water shortages and impose water use restrictions on affected source classes.

**WHEREAS**, the Governing Board is authorized by Section 373.083, Florida Statutes, to execute any powers, duties, and functions vested in it through the Executive Director and other staff as designated by the Governing Board; and

**WHEREAS**, in November 2023 the District issued an Emergency Water Shortage Order imposing modified Phase III water use restrictions in the northeast portion of Cape Coral ("water shortage area") to reduce withdrawals from the Mid-Hawthorn Aquifer; and

**WHEREAS**, water levels in the Mid-Hawthorn Aquifer in the northeast portion of Cape Coral did not sufficiently improve during the 2024 wet season as anticipated, and additional restrictions may be warranted to prevent significant harm to the water resources; and

**WHEREAS**, Rule 40E-8.331, F.A.C. establishes the minimum level for the Mid-Hawthorn Aquifer as the structural top of the aquifer. The structural top of the Mid-Hawthorn Aquifer within the water shortage area, as measured at USGS monitoring well L-4820, is -103.01 feet NAVD; and

**WHEREAS**, the water levels in the water shortage area are measured by USGS monitoring well L-4820. As of March 31, 2025, the water level at USGS monitoring well L-4820 was -91.64 feet NAVD ; and

**WHEREAS**, April and May are normally the last months of South Florida's dry season, when water needs are most acute due to increasing temperatures and minimal rainfall; and

**WHEREAS**, modified Phase IV water restrictions, as provided in Chapter 40E-21, F.A.C., will be necessary in the portion of northeastern Cape Coral subject to the current water shortage, should water levels decline to less than 10 feet above the MFL (-93.01 feet NAVD) for the Mid-Hawthorn Aquifer for two consecutive weeks, to prevent the aquifer from experiencing significant harm.

Resolution No. 2025 - 0409

NOW THEREFORE, BE IT RESOLVED BY THE GOVERNING BOARD OF THE SOUTH FLORIDA WATER MANAGEMENT DISTRICT:

**Section 1.** The Governing Board of the South Florida Water Management District hereby delegates to the Executive Director the authority to declare and impose modified Phase IV water shortage restrictions, pursuant to Chapter 40E-21 F.A.C., on users of the Mid-Hawthorn Aquifer within the water shortage area in northeast Cape Coral, when the water levels decline to less than 10 feet above the MFL (-93.01 feet NAVD) for the Mid-Hawthorn Aquifer for two consecutive weeks.

**Section 2.** This Resolution shall take effect immediately upon adoption.

PASSED and ADOPTED this 10<sup>th</sup> day April, 2025.



Attest:

  
District Clerk/Secretary

SOUTH FLORIDA WATER MANAGEMENT DISTRICT, BY ITS GOVERNING BOARD  
By:

  
Chauncey P. Goss, II  
Chairman

Legal form approved:

By:   
Office of Counsel

Print name:

Savannah Middlebush  

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## **Exhibit D**

### **Modified Phase IV Restrictions for Landscape Irrigation Uses Within Northeastern Cape Coral**

1. Affects users withdrawing groundwater from the mid-Hawthorn aquifer.
2. All wasteful and unnecessary water use is prohibited.
3. Hand watering of existing landscape utilizing a self-canceling nozzle and drip irrigation is allowed three times per week on Saturday, Sunday, and Wednesday.
4. Landscape irrigation using solid-state irrigation systems or portable sprinklers is prohibited. The only acceptable irrigation methods are drip irrigation and hand watering as described above.

## Exhibit E

### **Modified Phase IV Restrictions for Recreation Area Uses Within Northeastern Cape Coral**

1. Affects users withdrawing groundwater from the mid-Hawthorn aquifer.
2. All wasteful and unnecessary water use is prohibited.
3. Landscape irrigation for public “recreation areas”<sup>15</sup> shall be restricted to one day per week from 4:00 a.m. to 7:00 a.m. for all types of irrigation and from 5:00 p.m. to 7:00 p.m. for low volume hand watering only.<sup>16</sup>
4. Watering of pervious non-vegetated public recreational/sporting surfaces shall be restricted to ten minutes of application prior to each recreational/sporting event. Low volume watering<sup>17</sup> shall be used.

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<sup>15</sup> As defined by paragraph 40E-21.651(3)(d), Fla. Admin. Code.

<sup>16</sup> As defined by paragraph 40E-21.051(15), Fla. Admin. Code.

<sup>17</sup> As defined by paragraph 40E-21.051(23), Fla. Admin. Code

## **Exhibit F**

### **Modified Phase IV Restrictions for Nursery Uses Within Northeastern Cape Coral**

1. Affects users withdrawing groundwater from the mid-Hawthorn Aquifer.
2. All wasteful and unnecessary water use is prohibited.
3. Drip irrigation methods and low volume hand watering<sup>18</sup> shall be limited to three days per week on Monday, Wednesday, and Friday.
4. Overhead irrigation and flood irrigation system uses shall be prohibited.

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<sup>18</sup> As defined by paragraph 40E-21.051(15), Fla. Admin. Code.

## **EXHIBIT G**

### **Modified Phase IV Restrictions for Aesthetic Uses<sup>19</sup> Within Northeastern Cape Coral**

1. Affects users withdrawing groundwater from the mid-Hawthorn aquifer.
2. All wasteful and unnecessary water use is prohibited.
3. Outside aesthetic uses of water shall be prohibited.
4. Inside aesthetic uses of water shall be prohibited.

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<sup>19</sup> Paragraph 40E-21.651(4)(e), Fla. Admin. Code., defines “Aesthetic Use Class” as the use of water for fountains, waterfalls, and landscape lakes and ponds where such uses are entirely ornamental and decorative and serve no other functional purpose.



## **Exhibit H**

### **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](mailto: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.