

STATE OF FLORIDA  
SOUTH FLORIDA WATER MANAGEMENT DISTRICT

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SOUTH FLORIDA  
WATER MANAGEMENT DISTRICT

J.

In re:

SFWMD ORDER NO. 2011-094-DAO

EMERGENCY AUTHORIZATION FOR  
TEMPORARY BURN BAN ON DISTRICT  
LANDS SUBJECT TO CHAPTER 40E-7,  
Part V, F.A.C., IN ORANGE, OSCEOLA  
AND POLK COUNTIES DUE TO DROUGHT  
CONDITIONS AND IMMINENT DANGER OF  
WILDFIRES

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**EMERGENCY FINAL ORDER**

Under sections 120.569(2)(n), 373.016, 373.119(2), 373.1391 of the Florida Statutes and Rule 40E-1.611, F.A.C., the Executive Director of the South Florida Water Management District ("SFWMD") enters this Emergency Final Order (the "Order"), including Findings of Fact and Ultimate Facts and Conclusions of Law, in response to concern for the threat to the public health, safety, and welfare of the citizens of the State of Florida, natural resources, and recreational use of SFWMD lands due to severe drought conditions and the imminent danger of wildfires.

**FINDINGS OF FACT**

1. Currently, Florida is experiencing a severe drought condition that is manifested in both substantially below normal rainfall and extremely dry conditions. This condition has necessitated restrictions on water use to protect

the public's health, safety and welfare and the water resources from serious harm affecting lands within the SFWMD's jurisdiction.

2. South Florida is experiencing extremely dry conditions with rainfall totals well below normal so far this year. The current weather outlook calls for the fire threat to remain high in south Florida through the end of fire season in June.

3. As of June 16, 2011, 3,564 wildfires have burned 246,753 acres in Florida this year.

4. The danger of additional wildfires will increase dramatically if dry conditions persist.

5. On April 26, 2011, in response to concern for the threat to the public health, safety and welfare of the citizens of the State of Florida, natural sources, and recreational use of SFWMD lands due to severe drought conditions and imminent danger of wildfires, the SFWMD issued Emergency Order No. 2011-058-DAO for a temporary burn ban to prohibit the building of fires in grills, fireplaces or fire rings on SFWMD lands subject to Chapter 40E-7, Part V, F.A.C., in Broward, Charlotte, Collier, Hendry, Highlands, Glades, Lee, Martin, Miami-Dade, Monroe, Okeechobee, Palm Beach and St. Lucie Counties. The Order does not prohibit the use of portable campstoves or grills provided by users or grills provided by the SFWMD or its partnering agencies for cooking purposes. The temporary burn ban established under SFWMD Order No. 2011-058-DAO does not apply to Orange, Osceola and Polk Counties.

6. On May 12, 2011, the SFWMD's Governing Board issued Final Order No. 2011-067-DAO concurring with SFWMD Order No. 2011-058-DAO.

7. SFWMD Order No. 2011-058-DAO remains in effect.

8. Twenty-seven (27) counties throughout the State have established burn bans, including eight (8) counties within the SFWMD's jurisdiction (i.e. Hendry, Glades, Martin, Okeechobee, Osceola, Palm Beach, Polk and St. Lucie Counties).

9. On June 13, 2011, Governor Rick Scott issued Executive Order Number 11-128 (Emergency Management/Wildfires) declaring "that the ongoing danger of wildfires continues to threaten the State of Florida with a major disaster, and that as a consequence of this danger a state of emergency exists in the State of Florida."

9. The building of fires for recreational purposes in fireplaces and fire rings provided by the SFWMD or other authorized management agencies on SFWMD lands open to the public, as is allowed under Chapter 40E-7, Part V, F.A.C., could result in additional wildfires.

10. The use of portable campstoves and grills brought in by users and grills provided by the SFWMD or other authorized management agencies for cooking purposes only does not pose the same threat as fires which the rule allows to be built in fireplaces and fire rings provided by the SFWMD or other authorized management agencies.

11. The SFWMD finds that the building of fires in fireplaces and fire rings provided by the SFWMD or other authorized management agencies on SFWMD lands open to the public for recreational purposes under Chapter 40E-7, Part V, F.A.C., in the three (3) counties within the SFWMD's boundaries that are not

covered by SFWMD Order Nos. 2011-058-DAO and 2011-067-DAO, specifically, Orange, Osceola and Polk Counties (the "Subject Lands"), threatens the public health, safety and welfare, natural resources, and recreational use of the Subject Lands. Immediate action by Florida's citizens and government is necessary to prevent or ameliorate dangers to the public health, safety and welfare, natural resources, and recreational use of the Subject Lands posed by the increased risk of wildfires during the current drought.

12. The SFWMD finds that an emergency authorization is required to address the need for immediate action.

13. A Notice of Rights is attached hereto as Exhibit "A".

#### **ULTIMATE FACTS AND CONCLUSIONS OF LAW**

14. Pursuant to Rule 40E-7.537(9), F.A.C., building a fire in a grill, fireplace, or fire ring provided by SFWMD or other authorized management agencies on SFWMD lands subject to Chapter 40E-7, Part V, F.A.C., is allowed. The rule also allows for the use of portable campstoves and grills provided by the user. The building of fires by the public on SFWMD lands open to the public for recreational purposes other than as provided in Rule 40E-7.537(9), F.A.C., is specifically prohibited.

15. Based on the findings recited above and pursuant to Section 373.119(2), Florida Statutes, it is hereby concluded that the current severe drought conditions and increased risk of wildfires threatens the public health, safety, and welfare, natural resources, and recreational use of the Subject Lands, thereby requiring SFWMD to issue an immediate order (i) suspending portions of

Rule 40E-7.537(9), F.A.C., as it applies to the Subject Lands, (ii) temporarily prohibiting the building of fires in fireplaces and fire rings provided by SFWMD or other authorized management agencies on the Subject Lands, and (iii) limiting the use of portable campstoves and grills provided by the users and grills provided by the SFWMD or other authorized management agencies on the Subject Lands for cooking only in order to protect the public health, safety, and welfare, natural resources and recreational use of the Subject Lands.

16. Pursuant to Sections 120.569(2)(n) and 373.119(2), Florida Statutes, the Executive Director of SFWMD is authorized to issue this Order.

### **ORDER**

**THEREFORE IT IS ORDERED** that

17. The building of fires in fireplaces and fire rings provided by SFWMD or other authorized management agencies on the Subject Lands otherwise allowed under Rule 40E-7.537(9), F.A.C., is hereby prohibited until this Order is rescinded.

18. The use of portable campstoves and grills provided by users and grills provided by the SFWMD or other authorized management agencies on SFWMD lands subject to Chapter 40E-7, Part V, F.A.C., is allowed for cooking purposes only.

19. The general prohibition against the building of fires by the public on the Subject Lands other than in portable campstoves and grills provided by users and grills provided by the SFWMD or other authorized management agencies for

cooking purposes only, as set forth in Rule 40E-7.537(9), F.A.C., remains in full force and effect subject to the terms of this Order.

20. Failure to comply with the terms of this Order shall constitute a violation of a SFWMD Final Order under Chapter 373, Florida Statutes, and enforcement proceedings may be brought in any appropriate administrative or judicial forum.

21. This Order shall take effect immediately upon execution by the Executive Director of the SFWMD, and shall remain in effect until rescinded by the Executive Director or the Governing Board of the SFWMD.

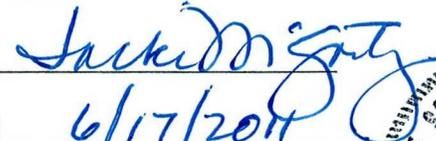
**DONE AND ORDERED** on this 17<sup>th</sup> day of June, 2011, in West Palm Beach, Florida.

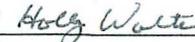
SOUTH FLORIDA WATER MANAGEMENT DISTRICT

  
\_\_\_\_\_  
Melissa L. Meeker, Executive Director

ATTEST:

Legal Form Approved

BY   
ON 6/17/2011

By 



## Exhibit A

### NOTICE OF RIGHTS

As required by Sections 120.569(1), and 120.60(3), Fla. Stat., following is notice of the opportunities which may be available for administrative hearing or judicial review 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. Not all the legal proceedings detailed below may be an applicable or appropriate remedy. 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 (SFWMD or District) action has the right to request an administrative hearing on that action pursuant to Sections 120.569 and 120.57, Fla. Stat. Persons seeking a hearing on a District decision which does or may determine their substantial interests shall file a petition for hearing with the District Clerk 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, Fla. Stat.; or 2) within 14 days of service of an Administrative Order pursuant to Subsection 373.119(1), Fla. Stat. "Receipt of written notice of agency decision" means receipt of either written notice through mail, or electronic mail, or posting that the District has or intends to take final agency action, or publication of notice that the District has or intends to take final agency action. Any person who receives written notice of a SFWMD 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.

#### **Filing Instructions**

The Petition must be filed with the Office of the District Clerk of the SFWMD. Filings with the District Clerk may be made by mail, hand-delivery or facsimile. **Filings by e-mail will not be accepted.** Any person wishing to receive a clerked copy with the date and time stamped must provide an additional copy. A petition for administrative hearing is deemed filed upon receipt during normal business hours by the District Clerk at SFWMD headquarters in West Palm Beach, Florida. Any document received by the office of the SFWMD Clerk after 5:00 p.m. shall be 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 SFWMD Clerk, P.O. Box 24680, West Palm Beach, Florida 33416.
- Filings by hand-delivery must be delivered to the Office of the SFWMD Clerk. **Delivery of a petition to the SFWMD's security desk does not constitute filing. To ensure proper filing, it will be necessary to request the SFWMD's security officer to contact the Clerk's office.** An employee of the SFWMD's Clerk's office will receive and file the petition.
- Filings by facsimile must be transmitted to the SFWMD Clerk's Office at (561) 682-6010. Pursuant to Subsections 28-106.104(7), (8) and (9), Fla. Admin. Code, a party who files a document by facsimile represents that the original physically signed document will be retained by that party for the duration of that proceeding and of any subsequent appeal or subsequent proceeding in that cause. Any party who elects to file any document by facsimile shall be responsible for any delay, disruption, or interruption of the electronic signals and accepts the full risk that the document may not be properly filed with the clerk as a result. The filing date for a document filed by facsimile shall be the date the SFWMD Clerk receives the complete document.

### **Initiation of an Administrative Hearing**

Pursuant to Rules 28-106.201 and 28-106.301, Fla. Admin. Code, initiation of an administrative hearing shall be made by written petition to the SFWMD in legible form and on 8 and 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 SFWMD identification number, if known.
2. The name, address and telephone number of the petitioner and petitioner's 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 SFWMD'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 SFWMD's proposed action.
7. A statement of the specific rules or statutes the petitioner contends require reversal or modification of the SFWMD'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 SFWMD to take with respect to the SFWMD's proposed action.

A person may file a request for an extension of time for filing a petition. The SFWMD may, for good cause, grant the request. Requests for extension of time must be filed with the SFWMD 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 that the SFWMD and any other parties agree to or oppose the extension. A timely request for extension of time shall toll the running of the time period for filing a petition until the request is acted upon.

If the District takes action with substantially different impacts on water resources from the notice of intended agency decision, the persons who may be substantially affected shall have an additional point of entry pursuant to Rule 28-106.111, Fla. Admin. Code, unless otherwise provided by law.

### **Mediation**

The procedures for pursuing mediation are set forth in Section 120.573, Fla. Stat., and Rules 28-106.111 and 28-106.401-405, Fla. Admin. Code. The SFWMD is not proposing mediation for this agency action under Section 120.573, Fla. Stat., at this time.

### **RIGHT TO SEEK JUDICIAL REVIEW**

Pursuant to Sections 120.60(3) and 120.68, Fla. Stat., a party who is adversely affected by final SFWMD action may seek judicial review of the SFWMD's final decision by filing a notice of appeal pursuant to Florida Rule of Appellate Procedure 9.110 in the Fourth District Court of Appeal or in the appellate district where a party resides and filing a second copy of the notice with the SFWMD Clerk within 30 days of rendering of the final SFWMD action.