

BEFORE THE GOVERNING BOARD OF THE
SOUTH FLORIDA WATER MANAGEMENT DISTRICT

Order No.: 2013-083-DAO-WS

IN THE MATTER OF:

Approval of the 2013
Lower East Coast Water
Supply Plan Update

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SOUTH FLORIDA
WATER MANAGEMENT DISTRICT

**FINAL ORDER APPROVING THE 2013 LOWER EAST
COAST WATER SUPPLY PLAN UPDATE**

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

FINDINGS OF FACT

1. The Lower East Coast ("LEC") is one of four regional planning areas in the District. The planning area covers approximately 6,100 square miles and includes Palm Beach, Broward, and Miami-Dade counties most of Monroe County, and eastern Hendry and Collier counties. The Lake Okeechobee Service Area, which includes portions of Martin, Okeechobee, Glades, and Lee counties, is part of the LEC water supply planning process because of its reliance on Lake Okeechobee.

2. Most of the Central and Southern Florida Project for Flood Control and Other Purposes ("C&SF Project") is located in the LEC Planning Area and serves as the regional water management system. The C&SF Project plays a critical role delivering water to rural and urban communities, moving water between natural systems, and providing flood protection.

3. The LEC Planning Area includes natural systems such as Lake Okeechobee, the Everglades, Florida and Biscayne bays, the Northwest Fork of the Loxahatchee River, and the Lake Worth Lagoon.

4. In 2000, the District's Governing Board approved the first Lower East Coast Regional Water Supply Plan ("LEC Plan"). The Governing Board subsequently updated the LEC Plan in 2007. The LEC Plan was then amended in 2008 to address the Lake Okeechobee minimum flow and level ("MFL") status and recovery strategy.

5. The purpose of this effort is to update the LEC Plan approved in 2000, as updated and amended, to establish a framework for future District actions to meet the water supply and associated natural resource protection requirements of Chapter 373, Fla. Stat.

6. The 2013 LEC Plan Update is based on a twenty-year planning period and includes: 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) a funding strategy; 6) consideration of how the water supply and resource development components serve the public interest or save costs; 7) technical data; and, 8) the MFL prevention and recovery strategies.

7. The 2013 LEC Plan Update takes into account cumulative impacts on water resources and guides future management of those resources to ensure adequate water supply for existing and projected reasonable-beneficial uses and to sustain the water resources and related natural systems through the year 2030.

8. The LEC Planning Area is expected to experience population growth, increasing from approximately 5.6 million permanent residents in 2010 to slightly more than 6.6 million by 2030, an increase of roughly 18 percent.

9. Public water supply ("PWS") remains the LEC Planning Area's single largest water use category, representing 49 percent of the planning area's total water demand in 2010, or 842 MGD. By 2030, the gross demand for PWS is projected to increase to 1,008 MGD, a 20 percent increase from the volume used in 2010.

10. Subsequent to approval of the 2005–2006 LEC Plan Update, the nation's economy fell into a long recession that had significant impacts on regional water supply planning, lowering population and demand forecasts. Between 2000 and 2010, the LEC Planning Area's population only grew by 600,000 people. During this period, total potable water use declined by approximately 10 percent, or 87 MGD.

11. Based on the existing population data, revised population projections, and a decline in per capita water use rates, the 2013 LEC Plan Update concludes that the majority of the PWS providers are able to meet their 2030 projected demand without additional allocation or infrastructure. Ten utilities proposed 13 potable water supply projects, totaling 76 MGD of treatment capacity. However, only two utilities must implement two of their proposed potable projects during the planning period to meet their 2030 projected demands.

12. The 2013 LEC Plan Update also incorporates 11 reclaimed water projects, several of which are necessary to comply with the 2008 Leah G. Schad Ocean Outfall Program. Implementation of the listed reclaimed water projects is expected to result in 178 MGD of additional reclaimed water by 2025.

13. Agricultural land use is expected to continue as the LEC Planning Area's second largest water user during the planning horizon, accounting for 34 percent of the total 2030 water demand. Agricultural areas are projected to remain stable over the next twenty years. By 2030, agricultural areas are projected to need supplemental irrigation

water for approximately 575,897 acres, which corresponds to a gross water demand of 668 MGD. The 2030 projected gross water demand is approximately 1 percent greater than 2010 estimates.

14. In addition to the recommendations in the 2013 LEC Plan Update, the Comprehensive Everglades Restoration Plan (“CERP”) and programs will maximize water resources by addressing issues of timing, retention, and freshwater flow regimes to the coastal environmental resources in the planning area. The CERP, a partnership between USACE and SFWMD, has long held a critical relationship with water supply planning in the LEC Planning Area and includes capital projects needed for restoration.

15. Implementation of many of the CERP projects has been delayed. However, the District initiated construction of several CERP projects within the LEC Planning Area, including the Loxahatchee River Watershed Restoration Project, Biscayne Bay Coastal Wetlands Phase 1, and C-111 Spreader Canal Western Project.

16. A number of CERP components are being formulated and evaluated as part of the Central Everglades Planning Project (“CEPP”). The CEPP is identifying and planning for projects on land in public ownership to allow more water to be directed south to Water Conservation Area 3, Everglades National Park, and Florida Bay while providing for other water related needs of the planning area. The recommended plan will require approval by the Governing Board and FDEP, as well as congressional authorization and appropriations.

17. The 2013 LEC Plan Update includes recommendations for water resource development projects and specific water supply development projects. The 2013 LEC Plan Update contains recommendations and implementation strategies regarding these potential solutions.

18. Development of the 2013 LEC Plan Update occurred in conjunction with an open public participation effort. Public participation was facilitated through the District's Water Resource Advisory Commission ("WRAC"). The WRAC is an advisory body to the Governing Board which provides a forum for improving public participation and decision-making on water resource issues affecting south Florida.

19. The District held five LEC Plan WRAC Issues Workshops in the planning area from February 2012 through June 2013. The primary role of the WRAC Issues Workshops was to receive public input, contribute local knowledge and expertise, and reflect the collective concerns of the various stakeholders in the planning region.

20. The 2013 LEC Plan Update is not a self-executing document. Implementation of the 2013 LEC Plan Update will occur through a variety of future Governing Board actions. A flexible course of action is proposed. However, future decisions concerning contracts, research, budgetary appropriations, cost-sharing arrangements, rulemaking, permitting, operational protocol, local agreements, inter-governmental coordination, and study efforts will commit the District to a specific direction. When such final decisions are made, affected persons will be offered appropriate public input opportunities and rights.

21. The 2013 LEC Plan Update dated August 2013 is attached to this Order as Exhibit A. Staff advised the Governing Board that interested parties may provide Staff with outstanding, minor comments associated with the 2013 LEC Plan Update. The Governing Board directs staff to address such minor comments prior to rendition of this Order.

22. Further, this planning document may be updated as appropriate in light of new technical information and analysis. Such updates are required to occur at no later than at five year intervals.

CONCLUSIONS OF LAW

23. The governing boards of water management districts are authorized to undertake regional water supply planning efforts. § 373.709, Fla. Stat. (2012). This includes the updating of existing plans, such as the LEC Plan.

24. Section 373.709, Fla. Stat., establishes a framework for the regional water supply plan's scope, analysis, implementation, and process. Id. Regional water supply plans must be based on at least a twenty-year planning period. Id.

25. The Florida Department of Environmental Protection ("FDEP") requires water management districts to include intermediate water use projections for each 5 year interval. Fla. Admin. Code R. 62-40.531(1)(a). FDEP also requires water management districts to update each regional water supply plan every five years. Fla. Admin. Code R. 62-40.531(8).

26. Specific water resource development and water supply development projects must be included in regional water supply plans. § 373.709, Fla. Stat. (2012).

27. The Governing Board concludes that the LEC Update meets the requirements of Section 373.709, Fla. Stat., and Rule 62-40.531, Fla. Admin. Code.

28. Section 373.709(5), Fla. Stat., establishes the opportunity for administrative review of District approval of a regional water supply plan. This provision states:

Governing board approval of a regional water supply plan shall not be subject to the rulemaking requirements of Chapter 120. However, any portion of an approved regional

water supply plan which affects the substantial interests of a party shall be subject to s. 120.569, Fla. Stat.

29. Section 120.569, Fla. Stat., details the legal provisions that apply in all proceedings in which the substantial interests of a party are determined by an agency. The attached Notice of Rights which describes the potential remedies which may exist is attached hereto as Exhibit B.

30. The Notice of Rights shall not cover actions taken by the Governing Board in the future to implement the LEC Plan Update. When implementing action is taken, the Governing Board shall offer an appropriate point of entry to substantially affected parties. To the extent the 2013 LEC Plan Update, or anything in the 2013 LEC Plan Update, is relied upon to support a future Governing Board action, a challenge to the implementation action may also challenge the supporting material contained in the LEC Plan.

31. The 2013 LEC Plan Update may be updated or amended as new technical information and analysis becomes available. Such updates shall occur in accordance with Section 373.709, Fla. Stat., at intervals no later than five years from the date of entry of this order.

32. The Governing Board authorizes staff to make minor changes to the 2013 LEC Plan Update in response to stakeholder comments submitted to staff that do not alter the substance of the 2013 LEC Plan Update.

ORDER

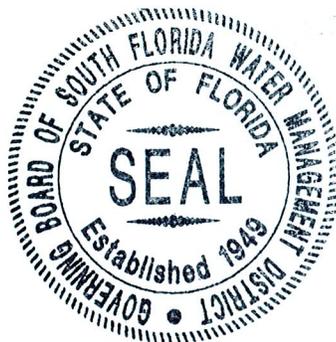
Based upon the foregoing Findings of Fact and Conclusions of Law, it is hereby ORDERED:

33. The 2013 Lower East Coast Water Supply Plan Update is hereby approved in accordance with Section 373.709, Fla. Stat.

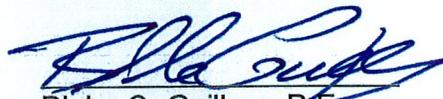
34. District staff is authorized to make minor changes to the 2013 LEC Plan Update that do not alter the substance of the LEC Plan Update in response to stakeholder comments submitted to staff. Such changes must occur no later than 30 days after the September 12, 2013 Governing Board meeting.

35. District staff is authorized to distribute notice of this Order by certified mail, regular mail, and/or electronic mail to persons who have participated in 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 12th day of September, 2013.



SOUTH FLORIDA WATER
MANAGEMENT DISTRICT
By its Governing Board


Blake C. Guillory, P.E.
Executive Director

Attest:


District Clerk/Assistant Secretary
September 17, 2013

Legal Form Approved:


Jennifer Bokankowitz, Esq.