

SOUTH FLORIDA WATER MANAGEMENT DISTRICT
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Order No. 2009-271-DAO-WS
SOUTH FLORIDA
WATER MANAGEMENT DISTRICT

IN THE MATTER OF:

Governing Board Concurrence
With Executive Director's Partial
Rescission of Declaration of
Modified Phase III Water Shortage
Restrictions for Landscape Irrigation
Use Withdrawing Water from
Surface Waters and Groundwater
within Osceola County and
Imposition of Modified Phase II Water
Shortage Restrictions (Concurrence
with Order No. 2009-269-DAO-WS)

**FINAL ORDER OF GOVERNING BOARD CONCURRENCE WITH
EXECUTIVE DIRECTOR'S PARTIAL RESCISSION OF DECLARATION OF
MODIFIED PHASE III WATER SHORTAGE RESTRICTIONS AND IMPOSITION OF
MODIFIED PHASE II SEVERE WATER SHORTAGE RESTRICTIONS**

This matter came before the Governing Board of the South Florida Water Management District ("District"), on the 13th day of November, 2009, for concurrence with SFWMD Order No. 2009-269-DAO-WS, issued by the District's Executive Director. After being otherwise fully apprised of the matter, the Governing Board issues this Final Order of Governing Board Concurrence, containing the following Findings of Fact, Ultimate Facts, and Conclusions of Law.

FINDINGS OF FACT

1. On December 14, 2007, the Governing Board of the South Florida Water Management issued a "Declaration of Modified Phase III Water Shortage Restrictions for Specified Uses Withdrawing Water from Surface and Groundwater

Sources within the boundaries of the South Florida Water Management District.” This Order (2007-870-DAO-WS) imposed Modified Phase III Extreme Restrictions on all agricultural, nursery, golf course, athletic/recreational areas, water utility, and landscape water uses of surface water and groundwater. A copy of Order No. 2007-870-DAO-WS is available at www.sfwmd.gov or from the District Clerk.

2. On April 10, 2008, the Governing Board issued Water Shortage Order No. 2008-166-DAO-WS, rescinding Phase III Extreme Water Shortage Restrictions and Imposing Phase II Severe Water Use Restrictions on various portions of the District. However, the landscape irrigation use class within Osceola County remained subject to Order No. 2007-870-DAO-WS.

3. The Executive Director determined that the restrictions set forth in Water Shortage Order No. 2007-870-DAO-WS required modification to address any potential confusion associated with the District and the St. Johns River Water Management District split jurisdiction of Osceola County. These modifications were not projected to significantly impact water resource conditions.

4. As a result, the Executive Director determined that a partial rescission of the Modified Phase III Extreme Water Shortage Restrictions was warranted for landscape irrigation use class use within Osceola County and on November 2, 2009, issued Order No. 2009-269-DAO-WS (Partial Rescission of Declaration of Modified Phase III Water Shortage Restrictions and Imposition of Modified Phase II Severe Water Shortage Restrictions). A copy of Order No. 2009-269-DAO-WS is attached hereto and incorporated by reference as Exhibit “A.”

ULTIMATE FACTS AND CONCLUSIONS OF LAW

5. Section 373.246(1)-(6), Fla. Stat., authorizes the Governing Board to issue orders declaring the existence of a water shortage and to adopt a water shortage plan to regulate the withdrawal and use of water so as to protect the water resources of the District.

6. Chapter 40E-21, Fla. Admin. Code, contains the water shortage plan adopted by the Governing Board.

7. On December 14, 2007, the Governing Board issued Water Shortage Order No. 2007-870-DAO-Ws, which affected Osceola County. Order No. 2007-870-DAO-WS authorized the Executive Director to modify the Order, with Governing Board concurrence.

8. Pursuant to Rules 40E-21.291(5), and 40E-21.391(4), Fla. Admin. Code, the Executive Director is authorized to modify or rescind a water shortage Order, with the Governing Board's concurrence.

9. Rules 40E-21.271, and 40E-21.371, Fla. Admin. Code, recognize the restrictions contained in Part V of Chapter 40E-21, Fla. Admin. Code, are general water use restrictions and also authorize the Executive Director to order any combination of restrictions in lieu of or in addition to those in Part V, Chapter 40E-21, Fla. Admin. Code.

10. To address any potential confusion associated with the District and the St. Johns River Water Management District split jurisdiction of Osceola County, it was necessary to modify the restrictions set forth in Order No. 2007-870-DAO-WS.

11. Water Shortage Order No. 2007-870-DAO-WS specifically authorized the Governing Board, Executive Director, or the Executive Director's designee to modify or rescind the Order if the circumstances set forth in Subsection 40E-

21.291(5), Fla. Admin. Code, were present.

12. The Executive Director or General Counsel is authorized to execute this final order pursuant to the delegation of authority set forth in South Florida Water Management Policies and Procedures, Section 101.22(b).

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

ORDER

Based upon the above Findings of Fact, Ultimate Facts and Conclusions of Law, the Governing Board of the South Florida Water Management District hereby concurs with the actions taken by the District's Executive Director in issuing Order No. 2009-269-DAO-WS, partially rescinding Order No. 2007-870-DAO-WS as to the landscape irrigation use class within Osceola County.

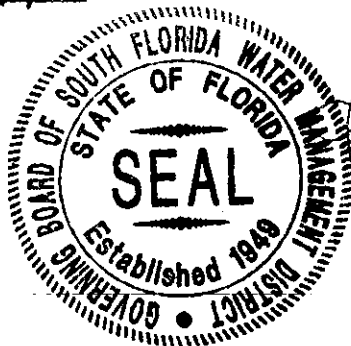
DONE AND SO ORDERED in Key Largo, Florida, on this 13th day of November, 2009.

SOUTH FLORIDA WATER
MANAGEMENT DISTRICT
By its Governing Board

ATTEST:

By: *Jackie M. Gentry*
District Clerk/Assistant Secretary
Date: November 14, 2009

By: *Sheryl G. Wood*
SHERYL G. WOOD
General Counsel



Legal Form Approved:

By: *Jennifer Bokankowitz*
Jennifer Bokankowitz

SOUTH FLORIDA WATER MANAGEMENT DISTRICT
3301 GUN CLUB ROAD
WEST PALM BEACH, FLORIDA

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Order No. 2009-269-DAO-WS

SOUTH FLORIDA
WATER MANAGEMENT DISTRICT

IN THE MATTER OF:

Partial Rescission of Declaration
of Modified Phase III Water
Shortage Restrictions for
Landscape Irrigation Use
Withdrawing Water from Surface
Waters and Groundwater within
Osceola County and Imposition
of Modified Phase II Water
Shortage Restrictions

**PARTIAL RESCISSION OF DECLARATION OF MODIFIED PHASE III WATER
SHORTAGE RESTRICTIONS AND IMPOSITION OF MODIFIED PHASE II
SEVERE WATER SHORTAGE RESTRICTIONS**

The Executive Director of the South Florida Water Management District (hereinafter "District"), after considering recommendations of District staff and being otherwise fully apprised of the matter, issues this Order pursuant to Chapter 40E-21, Florida Administrative Code ("Fla. Admin. Code"), based on the following Findings of Fact and Ultimate Facts and Conclusions of Law.

FINDINGS OF FACT

1. On December 14, 2007, the Governing Board issued a "Declaration of Modified Phase III Water Shortage Restrictions for Specified Uses Withdrawing Water from Surface and Groundwater Sources within the boundaries of the South Florida Water Management District." This Order imposed Modified Phase III Extreme Restrictions on all agricultural, nursery, golf course, athletic/recreational areas, water

utility, and landscape water uses of surface water and groundwater. A copy of Order No. 2007-870-DAO-WS is available at www.sfwmd.gov or from the District Clerk.

2. On April 10, 2008, the Governing Board issued Water Shortage Order No. 2008-166-DAO-WS, rescinding Phase III Extreme Water Shortage Restrictions and imposing Phase II Severe Water Shortage Restrictions on various portions of the South Florida Water Management District. However, the landscape irrigation use class within Osceola County remained subject to Water Shortage Order No. 2007-870-DAO-WS. A copy of Order No. 2008-166-DAO-WS is available at www.sfwmd.gov or from the District Clerk.

3. Water Shortage Order No. 2007-870-DAO-WS specifically authorizes the Governing Board, Executive Director, or Executive Director's designee to modify or rescind the existing water shortage restrictions.

4. The resource concerns in this region set forth in Water Shortage Order No. 2007-870-DAO-WS remain generally unchanged. A map depicting the area subject to this Order is attached hereto as Exhibit "A."

5. The restrictions as set forth in Water Shortage Order No. 2007-870-DAO-WS require modification to address any potential confusion associated with the District and the St. Johns River Water Management District split jurisdiction of Osceola County. These modifications should not significantly impact water resource conditions.

6. As provided in Water Shortage Order No. 2007-870-DAO-WS, the water sources subject to this Order are all surface and groundwater sources.

7. The landscape irrigation use class identified in Rule 40E-21.651, Fla. Admin. Code, within Osceola County is subject to this Order.

ULTIMATE FACTS AND CONCLUSIONS OF LAW

8. Section 373.246, Fla. Stat., authorizes the Governing Board to adopt a water shortage plan to regulate the withdrawal and use of water so as to protect the water resources of the District. Chapter 40E-21, Fla. Admin. Code, is the water shortage plan adopted by the Governing Board.

9. On December 14, 2007, the Governing Board issued Water Shortage Order No. 2007-870-DAO-WS, which affected Osceola County. Order No. 2007-870-DAO-WS authorized the Executive Director to modify the Order, with Governing Board concurrence. Rules 40E-21.291(5) and 40E-21.391(4), Fla. Admin. Code, authorize the Executive Director to modify water shortage orders, with Governing Board concurrence.

10. Rules 40E-21.271 and 40E-21.371, Fla. Admin. Code, recognize the restrictions contained in Part V of Chapter 40E-21, Fla. Admin. Code, are general water use restrictions and also authorize the Executive Director to order any combination of restrictions in lieu of or in addition to those in Part V, Chapter 40E-21, Fla. Admin. Code.

11. To address any potential confusion associated with the District and the St. Johns River Water Management District split jurisdiction of Osceola County, it is necessary to modify the restrictions set forth in Order No. 2007-870-DAO-WS. No significant impacts to water resources in this area are expected as a result of these modifications.

ORDER

Based upon the above Findings of Fact, Ultimate Facts and Conclusions of Law, the Governing Board orders that:

12. Water Shortage Order Number 2007-870-DAO-WS is hereby rescinded as to the landscape irrigation use class within Osceola County.

13. All landscape irrigation users within Osceola County previously subject to Water Shortage Order No. 2007-870-DAO-WS shall be subject to the restrictions set forth in Exhibit "B" of this Order, which are the same restrictions set forth in Exhibit "C" of Water Shortage order No. 2008-166-DAO-WS.

14. Information regarding this Order is posted on the District's Internet Web Site at www.sfwmd.gov, and will be communicated on a water "user hotline" for persons that do not have access to the Internet or have additional questions for District staff.

15. Permitted water users are requested to continue submitting water usage monitoring data in accordance with permit conditions. The Director of the Water Use Regulation Division is authorized to request, in writing, those permitted water users whose permit conditions require submittal of water usage monitoring data to provide additional data or data submittals at increased frequencies, as determined appropriate.

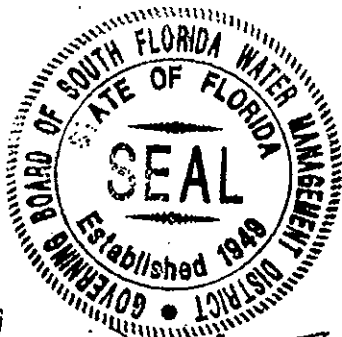
16. A user may request relief from this Order by filing an application for variance in accordance with Rule 40E-21.275, Fla. Admin. Code, but must conform to the water use restrictions until the Executive Director grants a temporary variance or the Governing Board grants a variance.

17. The Governing Board requests that every city and county commission, state and county attorney, sheriff, police officer and other appropriate local government official within the boundaries of Exhibit "A" assist in the implementation and enforcement of this Water Shortage Order. The District staff will cooperate with the local governments in implementing such enforcement measures.

18. This Order imposing Modified Phase II Water Shortage Restrictions, shall become effective on November 5, 2009 and shall remain in effect until modified or rescinded by the Governing Board, the Executive Director, or the Executive Director's designee, if the circumstances set forth in Subsection 40E-21.291(5), Fla. Admin. Code, are present.

19. A copy of the Notice of Rights is attached as Exhibit "C."

DONE AND SO ORDERED in West Palm Beach, Palm Beach County, Florida,
on this 2nd day of November, 2009.



ATTEST:

By: Jackie McGinty
District Clerk/Assistant Secretary
Date: November 2, 2009

SOUTH FLORIDA WATER
MANAGEMENT DISTRICT
By its Executive Director

By: [Signature]
CAROL ANN WEHDE

Legal Form Approved:

By: [Signature]
Jennifer Bokankowitz, Esq.

LANDSCAPE IRRIGATION EFFECTIVE NOVEMBER 05, 2009

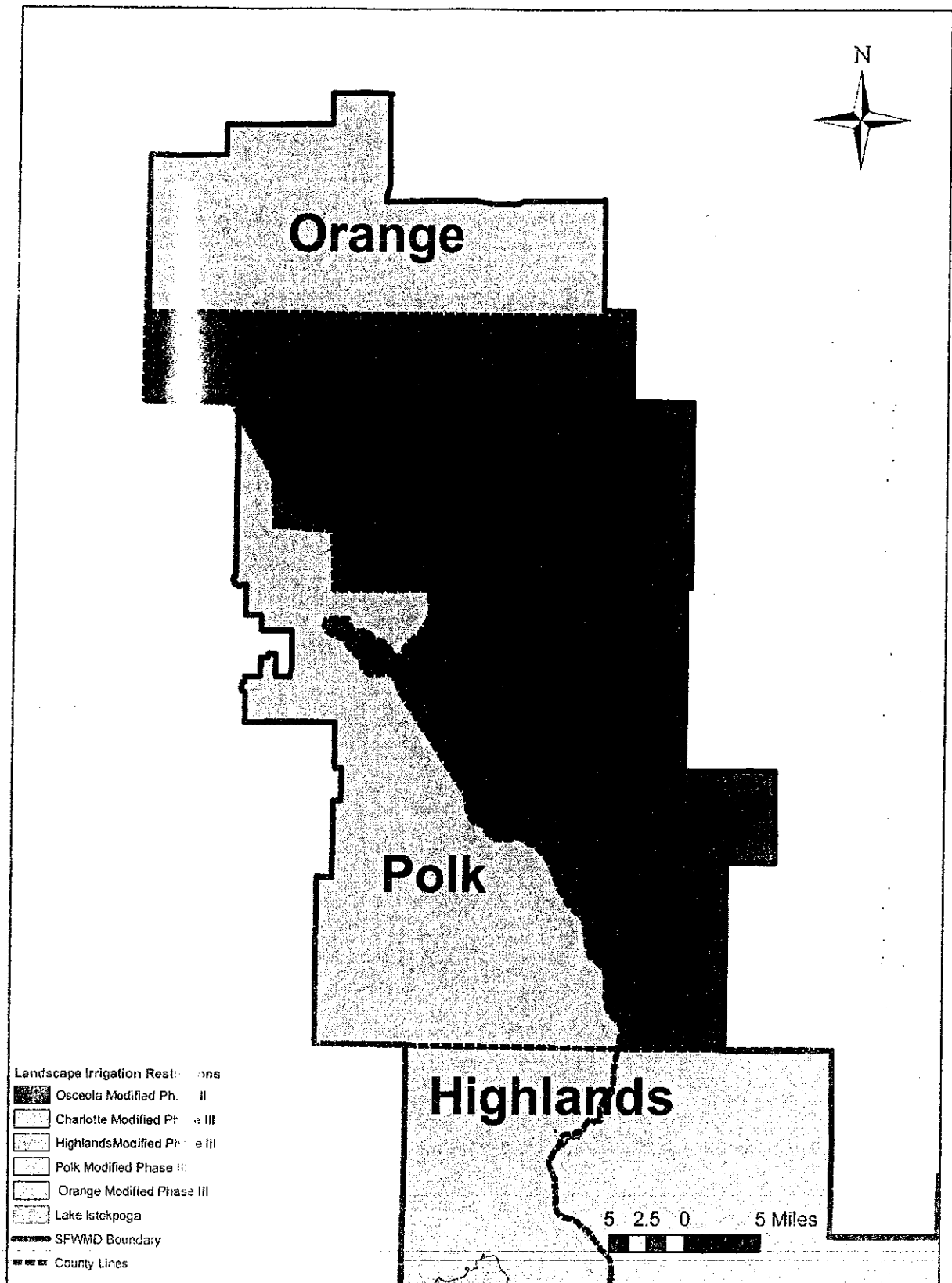


EXHIBIT B
MODIFIED PHASE II RESTRICTIONS

Landscape Irrigation

1. Landscape irrigation shall be permitted during the hours of 12:00 a.m. to 10:00 a.m. and/or 4:00 p.m. to 11:59 p.m. on the days specified in Paragraphs 4 and 5 below.

2. Those entities utilizing 100% reclaimed water shall not be restricted except as to the time restriction provided by Paragraph 1, and no landscape irrigation shall occur on Fridays.

3. Low volume irrigation, i.e., drip irrigation and microjet irrigation, shall be voluntarily reduced. Hand-watering utilizing a self-canceling nozzle of existing landscaping is allowed anytime for no more than 10 minutes per area for stress relief or to prevent plant die-off.

4. Existing Installations

A. Existing installations means any landscaping which has been planted and established for more than sixty (60) days.

B. Landscape irrigation for existing installations shall be permitted no more than two days per week.

1. Even addresses, installations with irrigation systems that irrigate both even and odd addresses within the same zones, including multi-family units and homeowners' associations, and rights-of-way or other locations with no address may accomplish necessary landscape irrigation only on Thursday and/or Sunday.

2. Odd addresses may accomplish necessary landscape irrigation only on Wednesday and/or Saturday.

C. Landscape irrigation using supplemented reclaimed water shall be subject to the restrictions set forth in Paragraph 4(B), unless:

1. The other supply is incidental stormwater runoff that enters a reclaimed water storage pond;

2. The other supply consists of withdrawals from an un-augmented stormwater system or water recovered from a permitted aquifer storage and recovery (ASR) well that stores seasonal diversions from a surface water body;

3. The other supply is recovered from a reclaimed water ASR well permitted by the Florida Department of Environmental Protection, including reclaimed ASR well testing authorized in preparation for permit issuance; or,

4. The reclaimed water provider and/or supplier has demonstrated to the District that the other water supply is necessary to achieve full disposal of the reclaimed water.

5. New Installations

A. On the day the new landscaping is installed, the new landscaping may be irrigated once without regard to the normally allowable watering days and times. Irrigation of the soil immediately prior to the installation of the new landscaping is also allowable without regard to the normal allowable watering days and times.

B. The sixty day period begins the day the new landscaping is installed. The new landscaping shall be installed within a reasonable time from the date of purchase, which may be demonstrated with a dated receipt or invoice.

C. Irrigation of new landscaping which has been in place for thirty (30) days or less may be accomplished on Monday, Tuesday, Wednesday, Thursday, Saturday, and/or Sunday.

D. Irrigation of new landscaping which has been in place for thirty-one (31) to sixty (60) days may be accomplished on Monday, Wednesday, Thursday, and/or Saturday.

E. Irrigation of the new landscaping is limited to areas containing the new landscaping only. An entire zone of an irrigation system may only be utilized for landscape irrigation under this paragraph if the zone in question is for an area that contains at least 50% new landscaping. If a zone contains less than 50% new landscaping, or if the new landscaping is in an area that will not typically be irrigated by an irrigation system, only the individual new plantings are eligible for additional irrigation under this paragraph. Targeted watering may be accomplished by hand watering or any appropriate method which isolates and waters only the new landscaping.

6. Landscape irrigation systems may be operated during restricted days and times for cleaning, maintenance, and repair purposes with an attendant on site in the area being tested and/or repaired. Landscape irrigation systems may be operated for such

purposes no more than once per week, and the run time should not exceed 10 minutes per zone.

7. Landscape irrigation for the purpose of watering-in fertilizers, insecticides, fungicides and herbicides, where such watering-in is required by the manufacturer, or by federal, state or local law, or best management practices, shall be allowed under the following conditions:

A. Such watering-in shall be limited to one application in the absence of specific alternative instructions from the manufacturer; and,

B. Such watering-in shall be accomplished during normally allowable watering days and times unless a professional licensed applicator has posted a temporary sign containing the date of application and the date(s) of needed watering-in activity.

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.

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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.
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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.

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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.