

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

Order No. 2009-285-DAO-WS

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  
Orange County and Imposition of  
Modified Phase II Water Shortage  
Restrictions

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WATER MANAGEMENT DISTRICT

**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](http://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 Orange 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](http://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. Paragraph 42 of Water Shortage Order 2007-870-DAO-WS required that all permitted and exempt users located in the portion of Orange County within the District's boundaries comply with the landscape irrigation provisions adopted by the St. Johns River Water Management District as set forth in Rule 40C-2.042(2), Fla. Admin. Code. A copy of Rule 40C-2.042(2), Fla. Admin. Code, was attached and incorporated into the Order.

5. On or about March 3, 2009, St. Johns River Water Management District amended Rule 40C-2.042(2), Fla. Admin. Code.

6. 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."

7. The restrictions as set forth in Water Shortage Order No. 2007-870-DAO-WS require modification to address any potential confusion associated with the amendment of Rule 40C-2.042(2), Fla. Admin. Code, by the St. Johns River Water

Management District. These modifications should not significantly impact water resource conditions.

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

9. The landscape irrigation use class identified in Rule 40E-21.651, Fla. Admin. Code, within Orange County, except for that portion of the Reedy Creek Improvement District which is located within Orange County, is subject to this Order.

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

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

11. On December 14, 2007, the Governing Board issued Water Shortage Order No. 2007-870-DAO-WS, which affected Orange 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.

12. 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.

13. To address any potential confusion associated within Orange County due to the amendment of Rule 40C-2.042(2), Fla. Admin. Code, by the St. Johns River Water Management District, 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:

14. Water Shortage Order Number 2007-870-DAO-WS is hereby rescinded as to the landscape irrigation use class within Orange County, except for that portion of the Reedy Creek Improvement District which is located in Orange County.

15. All landscape irrigation users within Orange County, except that portion of the Reedy Creek Improvement District located in Orange County, which were previously subject to Water Shortage Order No. 2007-870-DAO-WS shall be subject to the provisions set forth in Rule 40C-2.042(2), Fla. Admin. Code, which is attached hereto as Exhibit "B."

16. Information regarding this Order is posted on the District's Internet Web Site at [www.sfwmd.gov](http://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.

17. 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.

18. 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.

19. 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.

20. This Order imposing Modified Phase II Water Shortage Restrictions shall become effective on November 24, 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.

21. 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 20th day of November, 2009.



SOUTH FLORIDA WATER  
MANAGEMENT DISTRICT  
By its Executive Director

By:   
CAROL ANN WEHLE

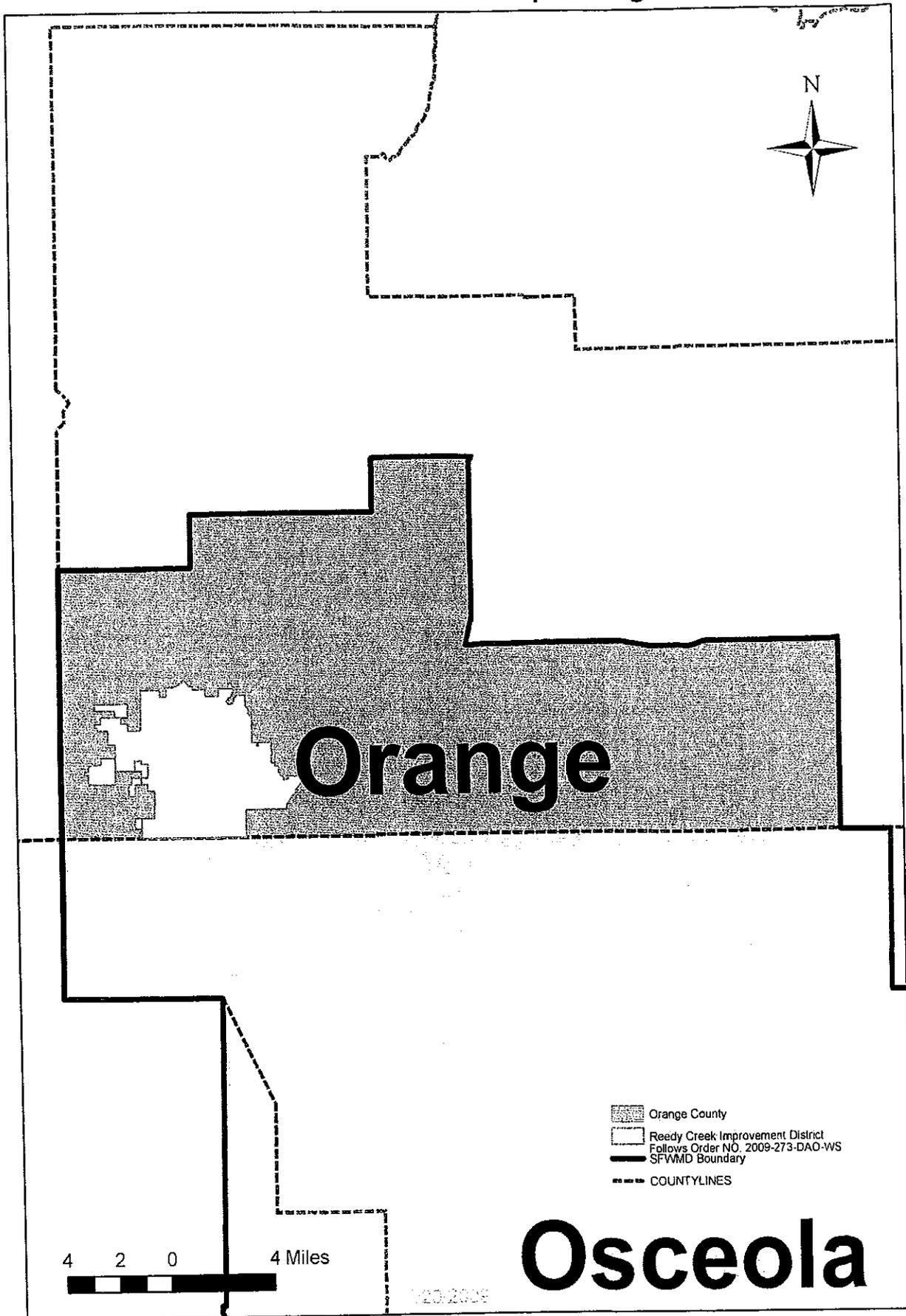
ATTEST:

By:   
District Clerk/Assistant Secretary  
Date: November 20, 2009

Legal Form Approved:

By:   
Jennifer Bokankowitz, Esq.

# Modified Phase II Water Shortage Restrictions for Landscape Irrigation Use



**Excerpt from  
St. Johns River Water Management District Rule 40C-2.042, Fla. Admin. Code**

**40C-2.042 General Permit by Rule.**

A general consumptive use permit by rule is hereby established for consumptive uses of water listed below that do not meet or exceed any permitting threshold under subsection 40C-2.041(1), F.A.C., except as provided in subsection 40C-2.042(8), F.A.C. However, this rule shall not apply to domestic uses of water by individuals, i.e., water used for the household purposes of drinking, bathing, cooking or sanitation. Persons using or proposing to use water in a manner not authorized under this rule, must obtain a permit pursuant to Chapter 40C-2, 40C-20, or 40C-22, F.A.C.

(2)(a) The Board hereby grants a general permit to each person located within the District to use, withdraw or divert water for landscape irrigation, provided landscape irrigation occurs in accordance with the provisions of subsection 40C-2.042(2), F.A.C., and provided the amount of water used is limited to only that necessary for efficient utilization. For the purpose of this rule, "landscape irrigation" means the outside watering of plants in a landscape such as shrubbery, trees, lawns, grass, ground covers, plants, vines, gardens and other such flora that are situated in such diverse locations as residential areas, public, commercial, and industrial establishments, and public medians and rights-of-way, but it does not include agricultural crops, nursery plants, cemeteries, golf course greens, tees, fairways, primary roughs, and vegetation associated with recreational areas such as playgrounds, football, baseball and soccer fields. For the purpose of this rule, the terms "residential landscape irrigation" and "non-residential landscape irrigation" are defined in this paragraph (a) as follows. "Residential landscape irrigation" means the irrigation of landscape associated with any housing unit having sanitary and kitchen facilities designed to accommodate one or more residents, including multiple housing units and mobile homes. "Non-residential landscape irrigation" means the irrigation of landscape not included within the definition of "residential landscape irrigation," such as that associated with public, commercial and industrial property, including commercial or transient housing units, hotel and motel units, and public medians and rights-of-way. For the purpose of this rule, "address" means the "house number" of the physical location of a specific property. This excludes post office box numbers. If a lot number in a mobile home park or similar community is used by the U.S. Postal Services to determine a delivery location, the lot number shall be the property's address. An "even numbered address" means an address ending in the numbers 0, 2, 4, 6, 8 or letters A-M. An "odd numbered address" means an address ending in the numbers 1, 3, 5, 7, 9 or the letters N-Z.

1. When Daylight Savings Time is in effect, landscape irrigation shall occur in accordance with the following irrigation schedule:

- a. Residential landscape irrigation at odd numbered addresses or no address may occur only on Wednesday and Saturday and shall not occur between 10:00 a.m. and 4:00 p.m.; and
- b. Residential landscape irrigation at even numbered addresses may occur only on Thursday and Sunday and shall not occur between 10:00 a.m. and 4:00 p.m.; and
- c. Non-residential landscape irrigation may occur only on Tuesday and Friday and shall not occur between 10:00 a.m. and 4:00 p.m.; and
- d. No more than 3/4 inch of water may be applied per irrigation zone on each day that irrigation occurs, and in no event shall irrigation occur for more than 1 hour per irrigation zone on each day that irrigation occurs.

2. When Eastern Standard Time is in effect, landscape irrigation shall occur only in accordance with the following irrigation schedule:

- a. Residential landscape irrigation at odd numbered addresses or no address may occur only on Saturday and shall not occur between 10:00 a.m. and 4:00 p.m.; and
- b. Residential landscape irrigation at even numbered addresses may occur only on Sunday and shall not occur between 10:00 a.m. and 4:00 p.m.; and
- c. Non-residential landscape irrigation may occur only on Tuesday and shall not occur between 10:00 a.m. and 4:00 p.m.; and
- d. No more than 3/4 inch of water may be applied per irrigation zone on each day that irrigation occurs, and in no event shall irrigation occur for more than 1 hour per irrigation zone on each day that irrigation occurs.

3. Landscape irrigation shall be subject to the following exceptions:

- a. Irrigation using a micro-spray, micro-jet, drip, or bubbler irrigation system is allowed anytime.
- b. Irrigation of new landscape is allowed at any time of day on any day for the initial 30 days and every other day for the next 30 days for a total of one 60-day period, provided that the irrigation is limited to the minimum amount necessary for such landscape establishment.

c. Watering in of chemicals, including insecticides, pesticides, fertilizers, fungicides, and herbicides when required by law, the manufacturer, or best management practices is allowed at any time of day on any day within 24 hours of application. Watering in of chemicals shall not exceed 1/4 inch of water per application except as otherwise required by law, the manufacturer, or best management practices.

d. Irrigation systems may be operated at any time of day on any day for maintenance and repair purposes not to exceed 20 minutes per hour per irrigation zone.

e. Irrigation using a hand-held hose equipped with an automatic shut-off nozzle is allowed at any time of day on any day.

f. Discharge of water from a water-to-air air conditioning unit or other water dependent cooling system is not limited by this permit.

g. The use of water from a reclaimed water system is allowed anytime. For the purpose of this paragraph, a reclaimed water system includes systems in which the primary source is reclaimed water, which may or may not be supplemented from another source during peak demand periods.

h. The use of recycled water from wet detention treatment ponds for irrigation is allowed anytime provided the ponds are not augmented from any ground or off-site surface water, or public supply sources.

4. When reclaimed water is available, the use of a private irrigation well for landscape irrigation is not authorized under subsection 40C-2.042(2), F.A.C. Reclaimed water is deemed available when reclaimed water is provided by a utility through a point of connection.

5. Any person who irrigates landscape with an automatic lawn sprinkler system installed after May 1, 1991, shall install, maintain and operate a rain sensor device or switch that overrides the irrigation system when adequate rainfall has occurred.

(b)1. A local government is strongly encouraged to enforce paragraph 40C-2.042(2)(a), F.A.C., within its jurisdiction by adopting a landscape irrigation ordinance that incorporates each of the provisions set forth in paragraph 40C-2.042(2)(a), F.A.C.

2. Where a local government has adopted a landscape irrigation ordinance, if the strict application of the specified day of week schedule would lead to unreasonable or unfair results in particular instances, the local government may grant a variance from the specific day or days for landscape irrigation identified in subparagraph 40C-2.042(2)(a)1. and 2., F.A.C., provided that the applicant demonstrates with particularity that compliance with the schedule of days for landscape irrigation will result in a substantial economic, health or other hardship on the applicant requesting the variance or those served by the applicant. Where a contiguous property is divided into different zones, a variance may be granted hereunder so that each zone may be irrigated on different days than other zones of the property. However, no single zone may be irrigated more than 2 days a week when Daylight Savings Time is in effect and no more than 1 day per week when Eastern Standard Time is in effect. Local governments shall not grant a variance from any other provision of this rule.

3. At least 30 days prior to the adoption of an ordinance to enforce paragraph 40C-2.042(2)(a), F.A.C., the local government shall provide a copy of the proposed ordinance to the District.

(c) A person proposing to use water for landscape irrigation where factors establish the need for irrigation to occur in a manner other than that authorized in subsection 40C-2.042(2), F.A.C., may submit an application for a Standard General Consumptive Use Permit pursuant to Chapter 40C-20, F.A.C., using form 40C-2-1082-2. Standard General Consumptive Use Permit for Landscape Irrigation, form number 40C-2-1082-2, effective 3-8-09, is hereby incorporated by reference. This permit application is limited to including no more than 25 nearby properties within a common plan of development. If a development consists of more than one phase or section, the 25 properties must be located within a single phase or section. A person seeking authorization to irrigate more than 1 additional day than that authorized by subsection 40C-2.042(2), F.A.C., must apply for a Standard General Consumptive Use Permit pursuant to Chapter 40C-20, F.A.C., using form 40C-2-1082-1.

*Specific Authority 373.044, 373.109, 373.113, 373.118, 373.171 FS. Law Implemented 373.019(6), 373.109, 373.118, 373.219, 373.223, 373.250, 373.609, 373.62 FS. History--New 7-23-91, Amended 1-7-99, 2-15-06, 3-8-09.*

## 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.