

SOUTH FLORIDA WATER MANAGEMENT DISTRICT
3301 Gun Club Road
West Palm Beach, Florida 33406

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MAR 15 2010 2:09 PM

Order No.: 2010- 043-DAO-WS

IN RE:

Rescission of Order No.:
2007-108-DAO-WS Imposing
Specific Water Supply Related
Actions Concerning the City of
Dania Beach's Public Water
Supply Facilities

ORDER RESCINDING ORDER NO. 2007-108-DAO-WS

The Governing Board 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 Sections 373.083, 373.086, 373.171, and 373.246, Florida Statutes ("Fla. Stat."), and 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. The District is a public corporation of the State of Florida, existing pursuant to Chapter 25270, Laws of Florida, 1949, and operating pursuant to Chapter 373, Fla. Stat., and Title 40E, Fla. Admin. Code, as a multi-purpose water management district with its principal office at 3301 Gun Club Road, West Palm Beach, Florida. The District has the power and duty to protect Florida's water resources and to administer and enforce the provisions of Chapter 373, Fla. Stat., and the rules promulgated there under, Title 40E, Fla. Admin. Code. The District has jurisdiction over the matters addressed in this Order.

2. The City of Dania Beach (hereinafter "City") is authorized by the District, through Water Use Permit No. 06-00187-W ("Permit"), to withdraw water for public water supply purposes from two production wells in the Biscayne aquifer portion of the Surficial aquifer system.

3. On May 10, 2007, the Governing Board issued Order No. 2007-108-DAO-WS, imposing operational restrictions on the City's withdrawals from its wellfield. A copy of the order is available from the District Clerk.

4. District staff has continued to monitor the conditions of the water resources and the needs of the water users as required pursuant to Rule 40E-21.221, Fla. Admin. Code.

5. Since the effective date of Order Nos. 2007-108-DAO-WS, surface and groundwater levels in the Water Conservation Areas ("WCAs") and Central and Southern Florida Flood Control Project Canals have significantly improved.

6. From April 10, 2008 to March 1, 2010, the District received an average of 95.53 inches in rainfall. This is ninety-five percent of the 30-year average rainfall.

7. As of March 9, 2010, the water levels for Water Conservation Areas ("WCAs") 1, 2A, and 3 were 16.53, 10.68, and 9.79 feet NGVD, respectively. These levels are above the regulation schedule identified in the U.S. Army Corps of Engineers ("Corps") Water Control Manual for the Water Conservation Areas and Everglades National Park. As a result, the Lower East Coast Region surface water recharge needs are being met by the WCAs and direct rainfall rather than deliveries from Lake Okeechobee.

8. Additionally, on February 1, 2010, the District renewed and modified the City's Permit. A copy of the Permit is attached hereto as Exhibit "A." The City was issued a maximum permitted allocation of 662.39 million gallons per year.

9. Because of the unstable saltwater interface and the uncertainty of the water levels in the future, the District, through Limiting Condition No. 5 of the Permit, is requiring the City to continue restricting the volume of water pumped from the City's wellfield to 34.1 million gallons per month.

10. Concurrently with the pumpage limitation, Limiting Condition No. 26 requires the City to submit a draft Work Plan which outlines the steps to conduct a safe yield wellfield study within ninety days of permit issuance. The study should estimate the quantity of water that can be safely withdrawn from the City's existing wellfield (or proposed wells or wellfields) without causing saltwater intrusion and address alternatives based on those results.

ULTIMATE FACTS AND CONCLUSIONS OF LAW

11. Section 373.083(2), Fla. Stat., vests the Governing Board of the District, to "[i]ssue orders to implement or enforce any provisions of th[e] chapter or regulations."

12. Section 373.086(1), Fla. Stat., authorizes the Governing Board to change the course of a waterway and to establish, maintain, and regulate water levels in all canals, lakes, rivers, and other waterbodies owned or maintained by the District.

13. Section 373.171(1), Fla. Stat., allows the Governing Board to issue any orders for the modification of any existing uses, diversion facilities, or storage facilities to obtain the most beneficial use of the water resources and to protect the public health, safety, and welfare and the interest of the water users affected.

14. Section 373.246(3), Fla. Stat., authorizes the Governing Board to impose restriction on classes of water use as may be necessary to protect the water resources from serious harm and to restore them to their previous condition.

15. Considering the above findings of fact, it is necessary to enter this Order temporarily modifying the City's approved operational plan and allowing surface water deliveries from the regional system to meet the City's water supply need.

ORDER

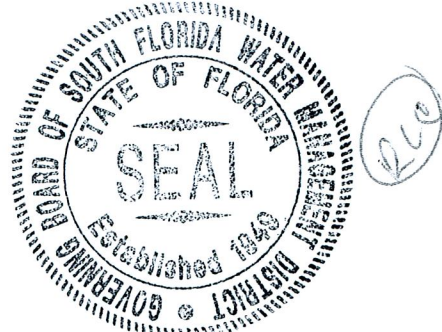
Based upon the above Findings of Fact, Ultimate Facts and Conclusions of Law, the Governing Board orders that:

16. Order No. 2007-108-DAO-WS is hereby rescinded.
17. The City shall operate in accordance with Permit Nos. 06-00187-W.
18. This Order rescinding the Modified Phase II Severe Water Shortage Restrictions shall become effective March 19, 2010.

19. A Notice of Rights is attached hereto as Exhibit "B."

DONE AND SO ORDERED at a public meeting held at the Brighton Seminole Indian Reservation, 800 E. Harney Pond Road, Okeechobee, Florida 34974, on this 11 day of March 2010.

SOUTH FLORIDA WATER
MANAGEMENT DISTRICT
By its Governing Board



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

ATTEST:

By: *Jackie McGee*
District Clerk/Assistant Secretary
Dated: March 15, 2010

Legal Form Approved:

By: *Jennifer Bokankowitz*
Jennifer Bokankowitz, Esq.

CERTIFICATE OF SERVICE

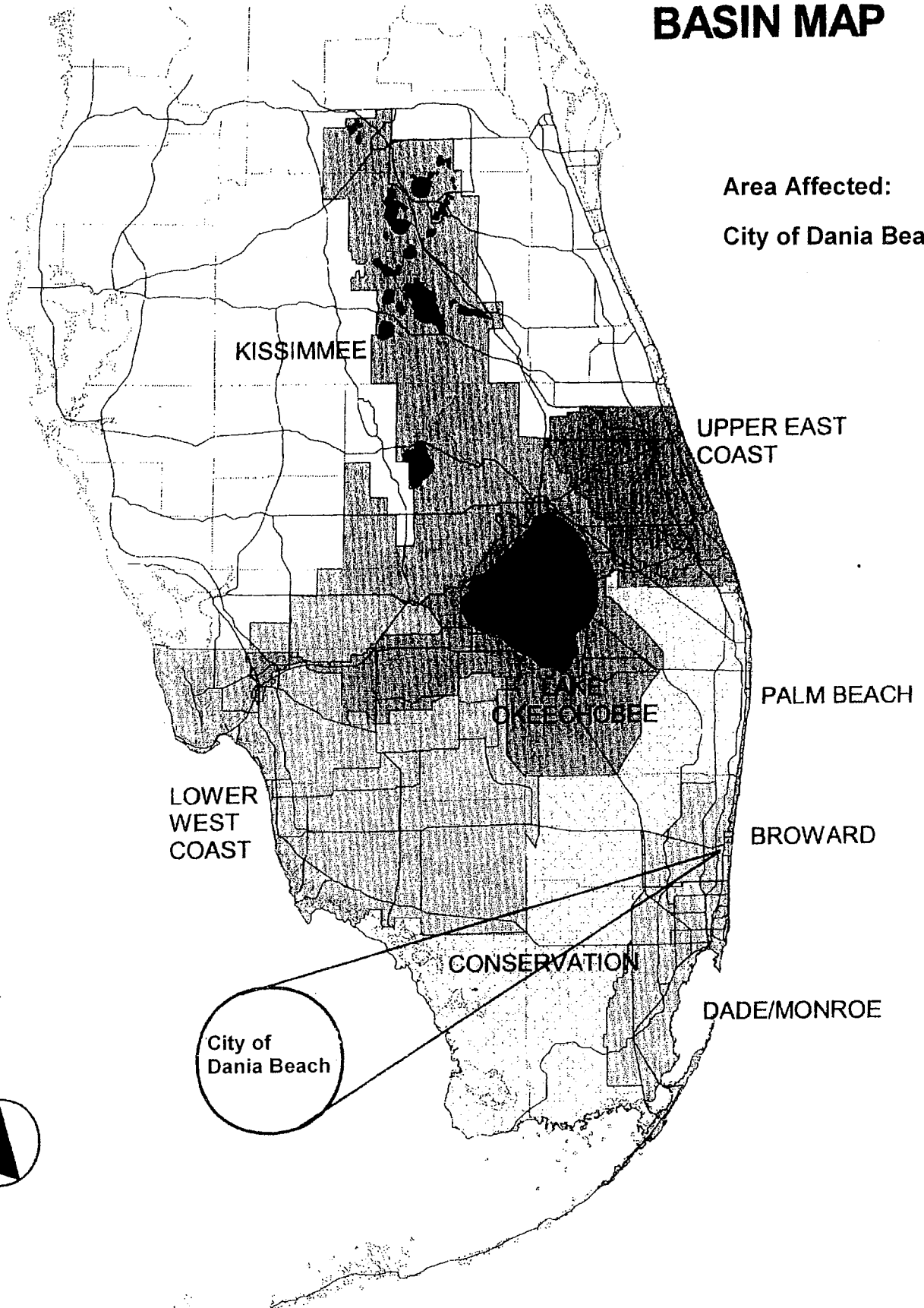
I HEREBY CERTIFY that a copy of the foregoing has been furnished via regular U.S. Mail to City of Dania Beach, 100 West Dania Beach Boulevard, Dania Beach, FL 33004, on this 15th day of March 2010.

Jennifer Bokankowitz
Jennifer Bokankowitz, Esq.
Florida Bar Number: 0011764
South Florida Water Management
District
3301 Gun Club Road, MSC 1410
West Palm Beach, FL 33406
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RESCISSION OF WS ORDER NO. 2007-108

BASIN MAP

Area Affected:
City of Dania Beach



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.