

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

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IN THE MATTER OF:

Order No. 2010-086-DAO-WS
SOUTH FLORIDA
WATER MANAGEMENT DISTRICT

Partial Rescission of Order No.
2007-870-DAO-WS, Imposing
Modified Phase III Extreme Water
Shortage Restrictions for Specified
Uses Withdrawing Water from Surface
Waters and Groundwater within
the Boundaries of the South Florida
Water Management District

**ORDER PARTIALLY RESCINDING MODIFIED PHASE III WATER
SHORTAGE RESTRICTIONS**

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 Section 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. On December 13, 2007, the Governing Board issued Water Shortage Order No. 2007-870-DAO-WS. Said Order imposed Modified Phase III Extreme Restrictions pursuant to Chapter 40E-21, F.A.C., on agricultural, nursery, golf course, athletic/recreational areas, water utility, and landscape irrigation water uses of surface and groundwater sources within the entire geographic boundaries of the South Florida Water Management District.

2. On April 10, 2008, the Governing Board issued Water Shortage Order No. 2008-166-DAO-WS, rescinding modified phase III water use restrictions and imposing modified phase II water use restrictions on agricultural, nursery, golf course, water utility,

and athletic/recreation water use classes throughout various portions of the District. However, modified phase III restrictions remained in effect for the landscape irrigation water use located in the service area for the City of Lake Worth, the City of Hallandale Beach, and the permitted users which withdraw water from the C-23, C-24, and/or C-25 Canals. A copy of the order is available from the District Clerk.

3. The area which is the subject of this Order is the City of Lake Worth and the City of Hallandale Beach and which were previously subject to Water Shortage Order No. 2007-870-DAO-WS. A map of the area affected by this Order is attached hereto as Exhibit "A."

4. The use class subject to this Order is the landscape irrigation water use classes as identified in Rule 40E-21.651, Fla. Admin. Code.

5. 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.

6. Since the effective date of Order No. 2007-870-DAO-WS, surface and groundwater levels in the eastern portion of the Lower East Coast have improved significantly.

7. From May 11th 2009 through May 10 2010, rainfall has averaged 65 to 75 inches over the Lower East Coast Region. These amounts are 107 to 130 percent of normal rainfall.

8. As of May 10, 2010, the water levels for Water Conservation Areas ("WCAs") 1, interior marsh of 2A, and 3 were 16.03, 11.88, and 9.31 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.

9. Groundwater levels near Lake Worth's Surficial Aquifer wellfield have improved as well. As of May 3, 2010, water levels in the vicinity of Lake Worth's wellfield were measured at 4.05 feet NGVD and 6.13 feet NGVD at Lake Worth Monitoring Well ("LWMW")-2 and LWMW-4, respectively.

10. Groundwater levels near Hallandale Beach's Surficial Aquifer wellfield have improved as well. As of May 5, 2010, water levels in the vicinity of Hallandale's wellfield were measured at 2.28 feet NGVD and 2.69 feet NGVD at wells G-2478 and G-2965, respectively.

11. The U.S. Geological Survey ("USGS") maintains a network of monitoring wells within the Lower East Coast Region of the District. Four of the six monitoring wells located in Palm Beach County reflect water levels in the highest tenth percentile for their respective periods of record. Monitoring well F-129, the closest monitoring well to Hallandale Beach's wellfield, also reflects water levels in the highest tenth percentile for its period of record.

12. However, the District remains concerned that chloride concentrations seen in monitoring wells located near the City of Lake Worth's wellfield remain high. Therefore, concurrently with the rescission of this Order, the District approved Order No. 2010-084-DAO-WU, retaining the wellfield operational restrictions contained in Order No. 2009-098-DAO-WS as well as requiring the installation of an additional monitoring well, the performance of a safe yield study, and submittal of an application to modify its Permit.

13. Elevated chloride concentrations also remain in monitoring wells located near the City of Hallandale Beach's wellfield. As of May 5, 2010, Well G-2478 and G-2965 showed chloride levels of 860 mg/L and 910 mg/L, respectively. The chloride versus time and water level versus time graphs for these monitor wells have also been attached hereto as Composite Exhibit "B."

ULTIMATE FACTS AND CONCLUSIONS OF LAW

14. 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.

15. The District's Water Shortage Plan is set forth in Chapter 40E-21, Fla. Admin. Code.

16. Rule 40E-21.291(4), Fla. Admin. Code, authorizes the Governing Board to modify or rescind water shortage orders.

17. 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. Rules 40E-21.271 and 40E-21.371, Fla. Admin. Code, also authorize the Governing Board to order any combination of restrictions in lieu of or in addition to those in Part V, Chapter 40E-21, Fla. Admin. Code.

18. Rule 40E-21.401, Fla. Admin. Code, and permit conditions, authorize the District to obtain data concerning monitoring of water usage.

19. The District has monitored the condition of the water resources and the needs of the users as required by Rule 40E-21.221, Fla. Admin. Code.

20. Considering the above findings of fact, it is necessary to enter this Order rescinding the specific restrictions on the affected users.

ORDER

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

21. Water Shortage Order No. 2007-870-DAO-WS is hereby rescinded for the service areas of the City of Lake Worth and the City of Hallandale Beach.

22. Variances granted from or extended by Water Shortage Order No. 2007-870-DAO-WS that concern property located in the service areas for the City of Lake Worth and the City of Hallandale Beach shall expire upon the effective date of this Order.

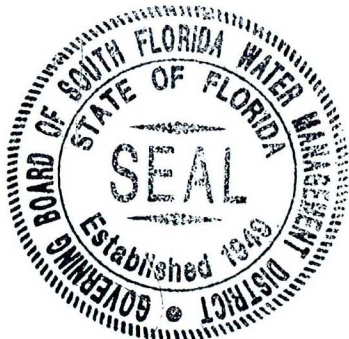
23. This Order partially rescinding the Modified Phase III Extreme Water Shortage Restrictions shall become effective May 20, 2010.

24. A Notice of Rights is attached as Exhibit "C."

DONE AND SO ORDERED in Stuart, Florida, on this 13th day of May 2010.

SOUTH FLORIDA WATER
MANAGEMENT DISTRICT
By its Governing Board

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



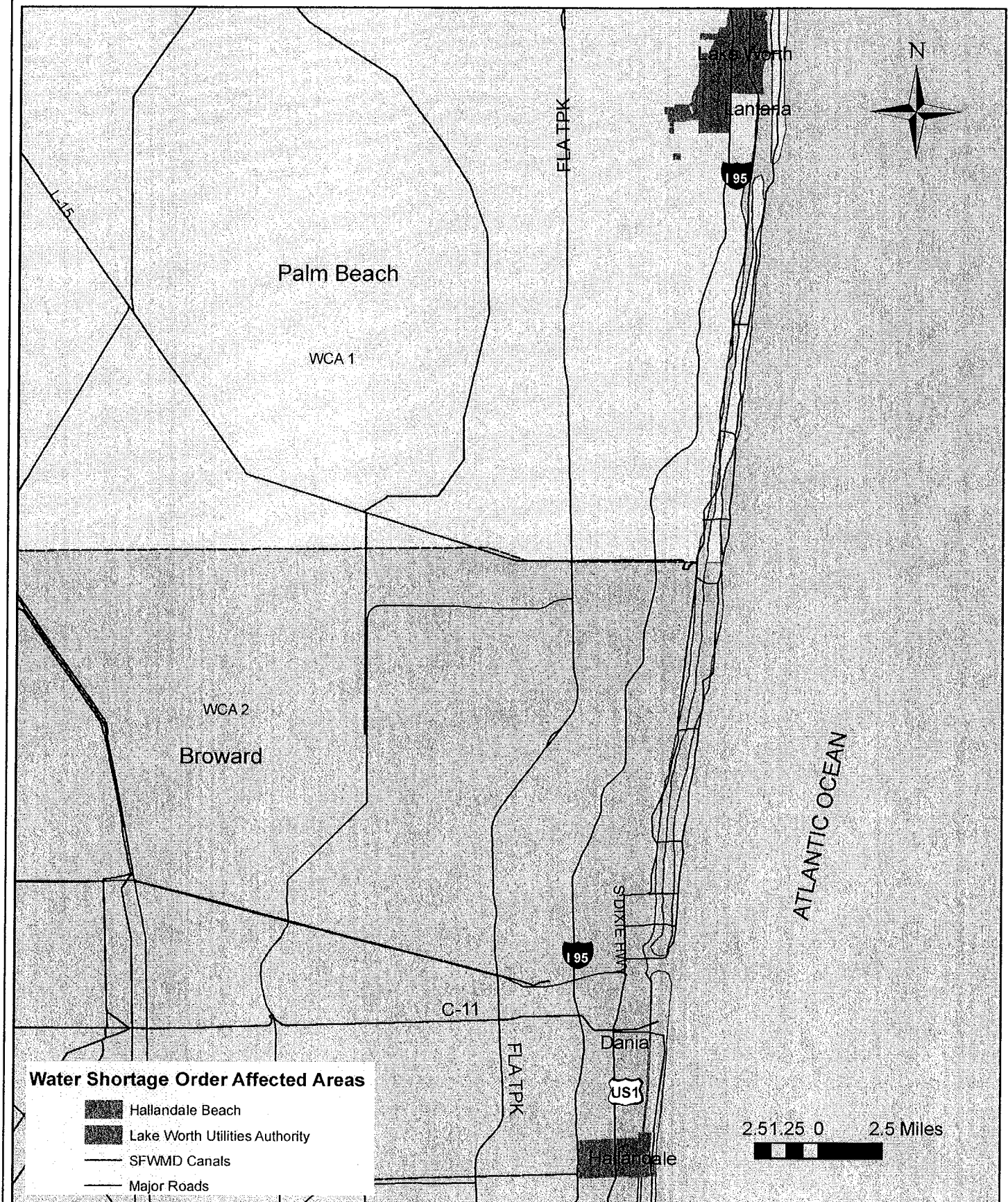
ATTEST:

By: *Jacqueline M. [Signature]*
District Clerk/Assistant Secretary
Dated: May 18, 2010

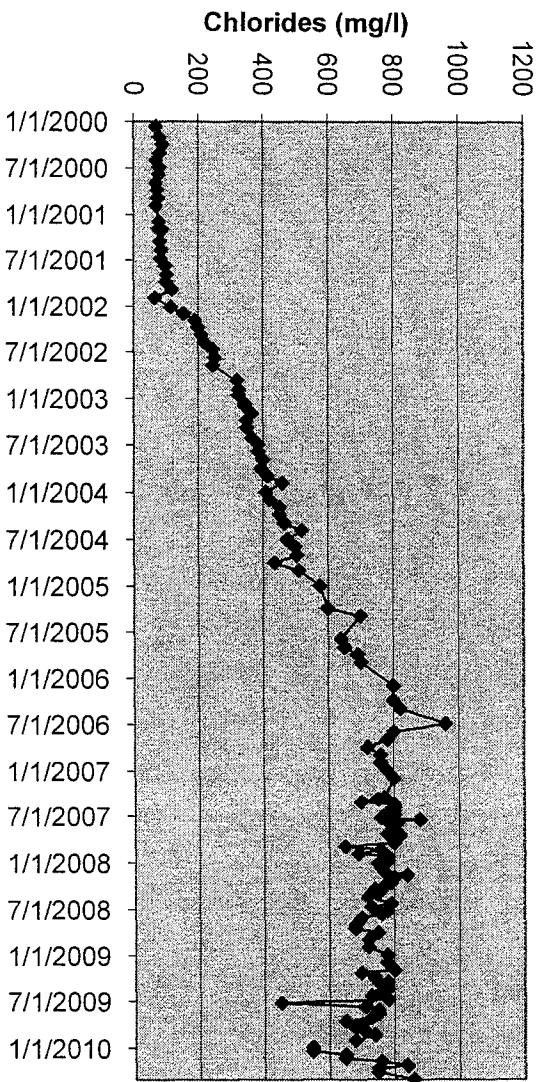
Legal Form Approved:

By: *[Signature]*
Jennifer Bokankowitz, Esq.

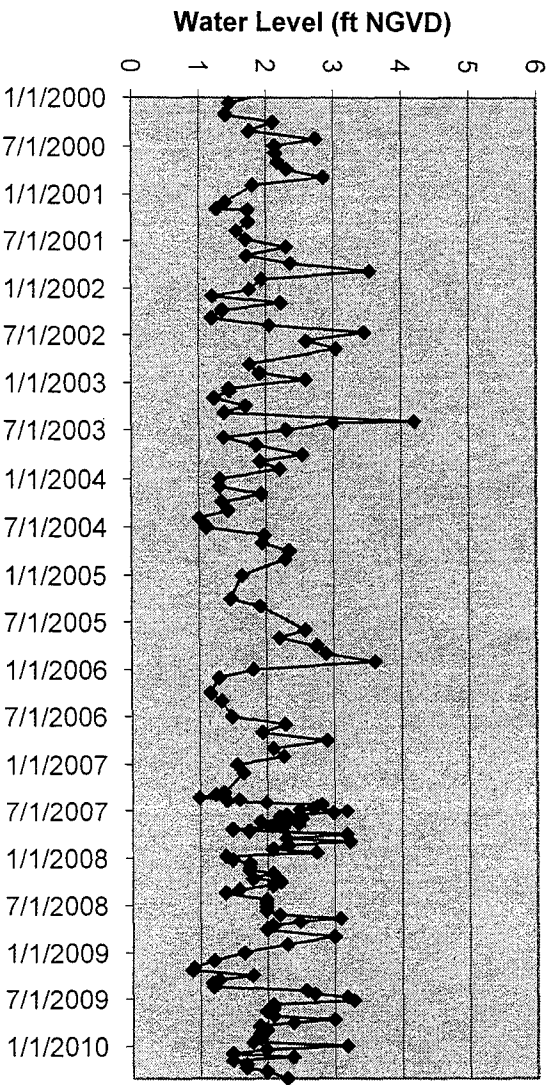
Partial Rescinding of Water Shortage Order No.2007-870-DAO-WS Affecting Lake Worth and Hallandale Beach



**Well G-2478
Hallandale 06-00138-W**



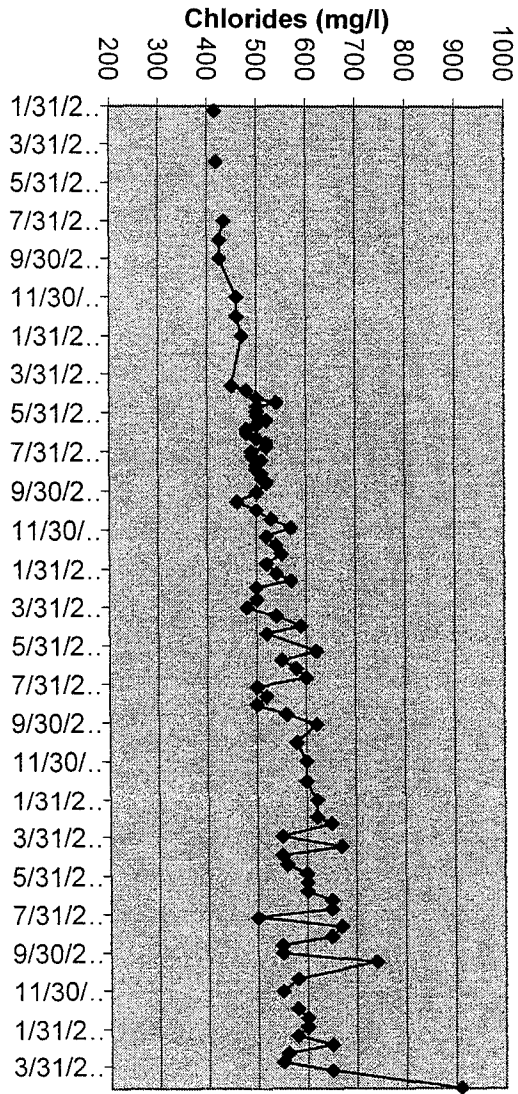
**Well G-2478
Hallandale 06-00138-W**



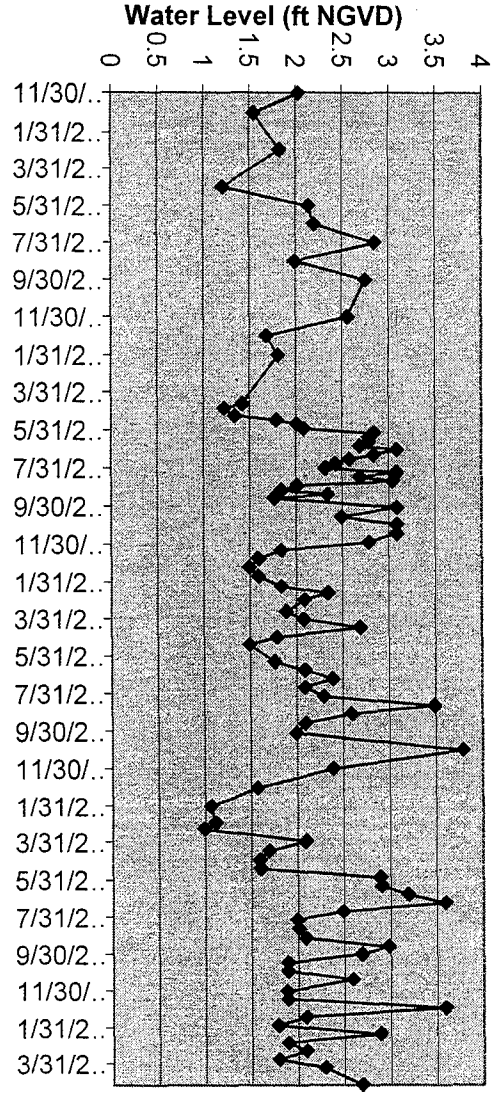
| Date | G-2478 CL |
|----------|--------------|
| 02/10/10 | 650 |
| 02/24/10 | 760 |
| 03/10/10 | 840 |
| 03/24/10 | 750 |
| 04/07/10 | 750 |
| 05/05/10 | 860 |

| Date | G-2478 WL |
|----------|--------------|
| 02/10/10 | 2.38 |
| 02/24/10 | 1.48 |
| 03/10/10 | 1.68 |
| 03/24/10 | 1.68 |
| 04/07/10 | 1.98 |
| 05/05/10 | 2.28 |

**Well G-2965
Hallandale 06-00138-W**



**Well G-2965
Hallandale 06-00138-W**



| Date | G-2965 CL |
|----------|--------------|
| 02/10/10 | 580 |
| 02/24/10 | 650 |
| 03/10/10 | 560 |
| 03/24/10 | 550 |
| 04/07/10 | 650 |
| 5/05/10 | 910 |

| Date | G-2965 WL |
|----------|--------------|
| 02/10/10 | 2.89 |
| 02/24/10 | 1.89 |
| 03/10/10 | 2.09 |
| 03/24/10 | 1.79 |
| 04/07/10 | 2.29 |
| 05/05/10 | 2.69 |

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.