

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

RECEIVED
OFFICE OF CLERK'S OFFICE
MAY 16 2011 11:13 AM

Order No.: 2011-061-DAO-WS

IN THE MATTER OF:

Declaration of Modified Phase III
Extreme Water Shortage
Restrictions for Specified Use
Classes Using Surface Waters within
the Lake Okeechobee Service Area,
including Lake Okeechobee and
Surface Waters Hydraulically
Connected to Lake Okeechobee
within the Everglades Agricultural
Area Water Use Basin, Lakeshore
Perimeter Water Use Basin,
Caloosahatchee River Water Use
Basin, and the St. Lucie River
Water Use Basin within Okeechobee,
Glades, Palm Beach, Lee, Hendry,
Martin, and St. Lucie Counties

**DECLARATION OF MODIFIED PHASE III EXTREME WATER SHORTAGE
RESTRICTIONS FOR THE LAKE OKEECHOBEE SERVICE AREA**

The Governing Board of the South Florida Water Management District, after considering recommendations of District staff and being otherwise fully apprised of the matter, issues this Order pursuant to Sections 373.175 and 373.246, Fla. Stat., and Chapters 40E-21 and 40E-22, Fla. Admin. Code, making the following Findings of Fact and Ultimate Facts and Conclusions of Law.

FINDINGS OF FACT

1. On March 21, 2011, the Executive Director issued Order No. 2011-038-DAO-WS, imposing Modified Phase I Moderate Water Shortage restrictions on all users that withdraw surface water directly from Lake Okeechobee and all surface waters hydraulically connected to Lake Okeechobee. A copy of Order No.: 2011-038-DAO-

WS is available from the District Clerk.

2. On April 4, 2011, the Governing Board issued Order No. 2011-045-DAO-WS, concurring with the Executive Director's order. A copy of the Concurrence Order is available from the District Clerk.

3. 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.

4. Since the effective date of Order No. 2011-038-DAO-WS, the water resource conditions described in that order have declined.

5. The water sources subject to this Order are Lake Okeechobee and the surface waters hydraulically connected to Lake Okeechobee within the Everglades Agricultural Area, Lakeshore Perimeter, Caloosahatchee River, and the St. Lucie River Water Use Basins within Okeechobee, Glades, Palm Beach, Lee, Hendry, Martin, and St. Lucie Counties, commonly referred to as the Lake Okeechobee Service Area ("LOSA"). A map depicting the area subject to this Order is attached hereto as Exhibit "A."

6. Users in the southern portion of the Indian Prairie Water Use Basin and Permittee Nos. 22-00003-W, 22-00052-W, 22-00056-W, 22-00140-W, and 22-00383-W shall remain subject to Order No. 2011-038-DAO-WS, which the Governing Board concurred with on April 14, 2011.

7. Lake Okeechobee water levels are regulated by the United States Army Corps of Engineers ("USACE") pursuant to the "Water Control Plan for Lake Okeechobee and the Everglades Agricultural Area," also known as LORS 2008. The

LORS 2008 was adopted in April 2008 by the USACE in accordance with the National Environmental Policy Act (“NEPA”). Of particular importance in this regard is the USACE’s Final Supplemental Environmental Impact Statement (“FSEIS”) and the United States Fish and Wildlife Service’s (“USFWS”) Biological Opinion concerning the USACE’s proposed LORS 2008. These documents contain the technical analysis of a comprehensive set of performance measures and alternatives, including the selected alternative, which forms the basis of the LORS 2008 that was ultimately approved by the USACE when it issued a Record of Decision (“ROD”) for LORS 2008 on April 28, 2008. The ROD includes the USFWS’ Biological Opinion. Since this date, the surface waters of Lake Okeechobee have been controlled pursuant to LORS 2008.

8. LORS 2008 is a compilation of operating criteria, guidelines, rule curves and specifications that govern the storage and releases from the Lake. LORS 2008 provides for management of Lake water levels and outlet canals via several distinct bands that are defined by seasonal fluctuations of the Lake level. Each management band is designed to achieve specific objectives, consistent with congressionally-authorized purposes for the Lake. The Water Shortage Management Band, the bottom band, is experienced when the Lake’s level is low. When the Lake’s level is in this band, water in Lake Okeechobee is managed in accordance with the District’s Water Shortage Plan. (LORS 2008 Water Control Plan 7-10). During the USACE’s NEPA analysis, it became apparent that LORS 2008 operations would cause Lake levels to drop into the Water Shortage Management Band significantly more frequently. (Appendices E and G of the FSEIS).

9. One of the USACE's primary concerns in adopting the LORS 2008 was public health and safety. As stated in the USACE's ROD:

The recommended plan will allow Lake Okeechobee to be managed at a lower level than the current regulation schedule. Managing the lake at a lower level improves public health and safety performance by reducing structural risk to the HHD [Herbert Hoover Dike] while rehabilitation efforts are underway, and will provide environmental benefits to Lake Okeechobee and the downstream estuaries. (ROD 1)

10. The ROD also notes other reasons for the LORS 2008 and indicates the supporting studies to change the prior Lake regulation schedule were initiated to address high Lake levels, which threaten the HHD, result in prolonged and high volume releases to the estuaries, and degrade the Lake's littoral zone habitat. (ROD 1)

11. The FSEIS contains analysis of the impacts of the LORS 2008's lower water levels on numerous performance measures. The performance measures which are particularly relevant to this Order include those associated with Lake Okeechobee, the Caloosahatchee Estuary, Water Conservation Areas, Stormwater Treatment Areas, the Everglades, the St. Lucie Estuary, and permitted water users.

12. In summary, the FSEIS's technical analysis of performance measures projected to occur as a result of the LORS 2008 indicated substantial improvement in the Lake's high water levels and the Caloosahatchee Estuary; substantial increase in the frequency, duration, and severity of water shortage restrictions on permitted water users; substantial increase in time that the Lake's level is below minimum navigation elevation; and violation of the District's Lake Okeechobee minimum flow and level found in Rule 40E-8.221, Fla. Admin. Code. Performance measures for other key indicators indicated less substantial impacts resulting from LORS 2008 implementation. (FSEIS,

including Appendices E and G)

13. The District acts as local sponsor of the Central and Southern Florida (“C&SF”) Flood Control Project; Lake Okeechobee is a part of this Project. When Lake Okeechobee’s water level declines into the Water Shortage Management Band, the LORS 2008 indicates: “[o]perations in this band are governed by the SFWMD’s Lake Okeechobee Water Shortage Management (LOWSM) Plan.” (LORS 2008 Water Control Plan 7-24)

14. The use classes subject to this Order are the agricultural, nursery, and diversion and impoundment, including secondary users within diversion and impoundment boundaries, water use classes identified in Rule 40E-21.651, Fla. Admin. Code.

15. From March 1, 2011 to May 9, 2011, the Lake Okeechobee Region received 4.71 inches of rainfall, approximately 76% of average. This has led to a rainfall deficit of 1.5 inches. For the same period of time, the East Caloosahatchee Region received 4.64 inches of rainfall, approximately 72% of average. This has led to a rainfall deficit of 1.85 inches.

16. Since the beginning of the dry season, in October 2010, the Lake Okeechobee Region has averaged around 9.25 inches of rainfall. This is about 56% of the average rainfall for this period of time. The U.S. Climate Prediction Center Drought Monitor reflects that the LOSA Region is experiencing a D3 (extreme) drought.

17. Rainfall in the watershed basins which recharge Lake Okeechobee was about 60% of average. Low rainfall levels in these basins have reduced water inflows to Lake Okeechobee. Current and projected inflows to Lake Okeechobee over the

remainder of the dry season are currently approximately 1,000 cfs but are projected to decline as Lake Kissimmee's level is projected to drop below its regulation schedule.

18. As of May 11, 2011, the Lake Okeechobee water level was 10.63 feet NGVD 29. This stage is 2.76 feet lower than the historical average for this date and 1.55 feet lower than the simulated average using the current regulation schedule (LORS 2008).

19. Compounding climatic considerations, it is relevant to note the Lake's current level is lower than would have occurred under prior Lake regulation schedules, due to LORS 2008 operations.

20. Lake Okeechobee stage projections indicate a greater than 50% chance that lake levels will decline over the next 3 weeks to below 10.5 feet NGVD 29 on June 1, 2011. If the Lake experiences drier hydrologic conditions equating to those which are experienced 25% of the time, then the Lake's level could decline to below 10 feet NGVD 29 by June 1, 2011. Unless the wet season is above normal, Lake Okeechobee stage will most likely remain in the water shortage band through the wet season. Staff will continue to monitor conditions and update projections.

21. To continue to meet the reduced water supply demands from Lake Okeechobee in the Everglades Agricultural Area some of the subject regions south of the Lake, the District will install temporary pumps at Structures S-351, S-352 and S-354 if it appears the District will be unable to provide water supply from Lake Okeechobee to the Everglades Area Water Use Basin by gravity.

22. These temporary pumps aid in water deliveries to the south from the Lake. These temporary pumps have a total capacity of 1,400 cubic feet per second ("cfs").

Therefore, deliveries to the south from Lake Okeechobee will not be able to exceed 1,400 cfs. These flow rates are insufficient to meet all of the users' demands within the Everglades Agricultural Area Water Use Basin or allow Lake Okeechobee to serve as a secondary source to users within the Lower East Coast Region.

23. Low water levels may compromise the navigational use of Lake Okeechobee. The District closed lockages at S-193, S-135, S-131, and G-36. The USACE limited lockages at S-79 to three times per day. When Lake Okeechobee water levels reach 10.5 ft. NGVD, the USACE will restrict lockages to twice per day.

24. As a result, there is a significant potential that water supplies from Lake Okeechobee will decline to the extent that sufficient water will not be available to meet the present and anticipated requirements of the water users within the LOSA Region, while protecting the water resources from serious harm.

ULTIMATE FACTS AND CONCLUSIONS OF LAW

25. 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.

26. The District's Water Shortage Plan is set forth in Chapter 40E-21, Fla. Admin. Code. Chapter 40E-22, Fla. Admin. Code, contains the regional water shortage plan for LOSA.

27. Part III of Chapter 40E-22, Fla. Admin. Code, identifies water levels within Lake Okeechobee that will be considered by the Governing Board in declaring a water shortage pursuant to Rule 40E-21.231, Fla. Admin. Code.

28. When water levels within Lake Okeechobee fall below, or can be expected to fall below, the June 1st lake stage of 10.5 feet NGVD 29, a Phase III water shortage may be declared within LOSA. Fla. Admin. Code. R. 40E-22.332(2)(c).

29. The Governing Board may order any combination in lieu of or in addition to the restrictions in Part V, Chapter 40E-21, Fla. Admin. Code, if necessary to achieve the percent reduction in overall demand, including, but not limited to, restrictions on the total amount of water withdrawn at any given time; the timing of withdrawal; restrictions on withdrawal rates; and the geographic location of water withdrawals. Fla. Admin. Code R. 40E-21.271.

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

31. 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.

32. In addition to considering that Lake Okeechobee levels have fallen within the Water Shortage Management Band, the District considers other factors that evaluate the sufficiency of remaining water supplies, the projected user demands, climatic forecasts, the potential for serious harm to the water resources, projected water savings from cutting back user withdrawals from the affected sources, and any projected impacts on imposing such cutbacks on the consumptive use. Fla. Admin. Code R. 40E-21.221.

33. The District also considered the Lake Okeechobee water levels projected to occur on June 1, 2011 in accordance with Rules 40E-21.221 and 40E-22.332, Fla. Admin. Code.

34. As a result, Phase III water shortage restrictions may be authorized requiring cutbacks on consumptive use demands on agricultural, nursery, and diversion and impoundment uses, including secondary users within diversion and impoundment boundaries, for a 1-in-10 year rainfall condition by 45% within LOSA.

35. Considering the above findings of fact, it is necessary to enter this Order imposing 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:

36. When Lake Okeechobee water levels fall below 10.5 feet NGVD 29, the following restrictions shall apply to permitted users and secondary users within diversion and impoundment boundaries:

a. All irrigation systems shall be operated in a manner that maximizes the percentage of water withdrawn and held which is placed in the root zone of the crop and will minimize the amount of water withdrawn and released or lost to the users but is not immediately available for other users.

b. Users having access to more than one source class shall maximize the use of the unrestricted or least restricted source class.

c. District staff may, upon request from agricultural representatives, redistribute LOSA weekly allocations across sub-basin boundaries as long as weekly LOSA allocations are not exceeded.

d. C&SF Project system deliveries to permitted users within LOSA shall reflect a 45% cutback in supplies needed to meet the user demands during 1-in-10

year drought conditions. If Lake Okeechobee falls below 10.5 feet NGVD after the weekly allocations for permitted users have been posted, the 45% cutback shall be applied to the following week's allocations.

e. The following restrictions and process will apply to distributing water supplies to agricultural users within LOSA:

i. Permitted users are authorized to take their weekly allocation Monday through Friday, unless otherwise directed on the District's webpage (www.sfwmd.gov) under "Water Supply Plan for LOSA."

ii. The following specific restrictions shall also apply to permitted users:

1. Agricultural operations which use overhead irrigation methods may apply their weekly allocation of water as needed.

2. Overhead irrigation of citrus nursery stock for moisture stress reduction shall be allowed on an as needed basis so long as the weekly allocation is not exceeded.

3. Nurseries using overhead irrigation methods may apply their weekly allocation of water as needed.

4. Low volume irrigation hours shall be voluntarily reduced.

5. Livestock water use shall be voluntarily reduced.

6. Aquacultural water use shall be voluntarily reduced.

7. Soil flooding for vegetable seed planting, rice planting, burning of sugarcane prior to harvest, and to permit harvesting of sod shall be allowed

on an as needed basis so long as the weekly allocation (for the "Other" use category) is not exceeded.

37. Pursuant to Section 373.119, Fla. Stat., and in recognition of the need of multiple users within the affected basins to lower pump intakes or install additional temporary facilities, the Governing Board issues this Order authorizing the temporary installation and operation of pumping facilities located within the area which is subject to this Order. Application processing fees shall be waived for temporary installations authorized by this Order. This Order shall automatically authorize users to install such temporary pumping facilities, so long as the following conditions are satisfied:

a. A written description of the temporary pumping facility or lowered intake is submitted to District staff which indicates the intent to temporarily enable the permitted consumptive users to access surface water at lower elevations.

b. An 8½" × 11" drawing is submitted clearly showing all additional temporary facilities to be placed in the District's right-of-way. Pump size and capacity, diameter, length, and elevation of any culvert installation must also be depicted on the drawing.

c. The user provides reasonable assurances that all reasonable water quality protection measures necessary to avoid off-site impacts will be employed. Measures may include turbidity screens, hay bales, fuel spill containment tank, etc. The user must also provide reasonable precautions to ensure that all temporary facilities do not increase wildfire potential or restrict other permittees from receiving their allocation of water.

d. The user provides reasonable assurances that the temporary installations, and the operation thereof, will not degrade or otherwise interfere with the integrity of any channel, bank, berm, levee, structure, or any secondary channel, bank, berm, levee, or structure.

e. The user provides reasonable assurance that temporary pumping units and appurtenant equipment shall be installed in such a manner so as to not block or otherwise interfere with District access. Piping shall be properly buried or bridged in a manner satisfactory to the District.

f. A 24-hour telephone contact person with a listing of the person's work, residence, mobile, and pager numbers must be provided with the written submittal.

g. The written submittal must include a statement accepting application of all standard limiting conditions contained in Rule 40E-6.381, Fla. Admin. Code, to the temporary pumping installation authorized by this Order.

h. Users must provide evidence of their pump installation design and intent to comply with the terms of this Order, along with appropriate 24-hour contact information at the site, in a visible weatherproof pouch or cover.

i. The written submittal must include a statement accepting the requirement that all temporary facilities will be removed from the canal and right-of-way within 15 days after the Governing Board or Executive Director rescinds the Declaration of Water Shortage.

j. The written submittal must include a statement accepting the requirement that any canal and right-of-way impacted by the placement of temporary

facilities will be restored to the District's satisfaction within 15 days after the Governing Board or Executive Direct rescinds the Declaration of Water Shortage.

38. Permitted water users are requested to submit water usage monitoring data in accordance with permit conditions. Pumpage reports for the temporary facilities authorized pursuant to Paragraph 37 must be submitted. 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.

39. 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.

40. Variances granted from Water Shortage Order Number 2011-038-DAO-WS will continue to be effective under this Order. Variances shall expire upon a declaration by the Governing Board that a water shortage in the affected areas no longer exists, rescinds this Order, or when a more restrictive water declaration is made in the affected areas (unless otherwise provided in such water shortage declaration).

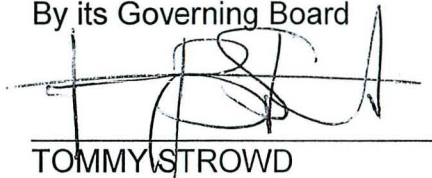
41. The Governing Board requests that every city and county commission, state and county attorney, sheriff, police officer and other appropriate local government official within the boundaries of Exhibit "A" assist in the implementation and enforcement of this Water Shortage Order. The District staff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

42. This Order imposing Modified Phase III Extreme Water Shortage Restrictions shall become effective on May 19, 2011 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.

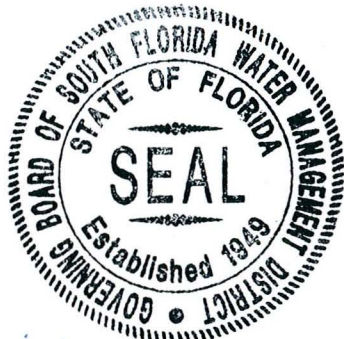
43. A copy of the Notice of Rights is attached as Exhibit "B."

DONE AND SO ORDERED in West Palm Beach, Florida, on this 12th day of May 2011.

SOUTH FLORIDA WATER
MANAGEMENT DISTRICT
By its Governing Board



TOMMY STROWD
Interim Executive Director



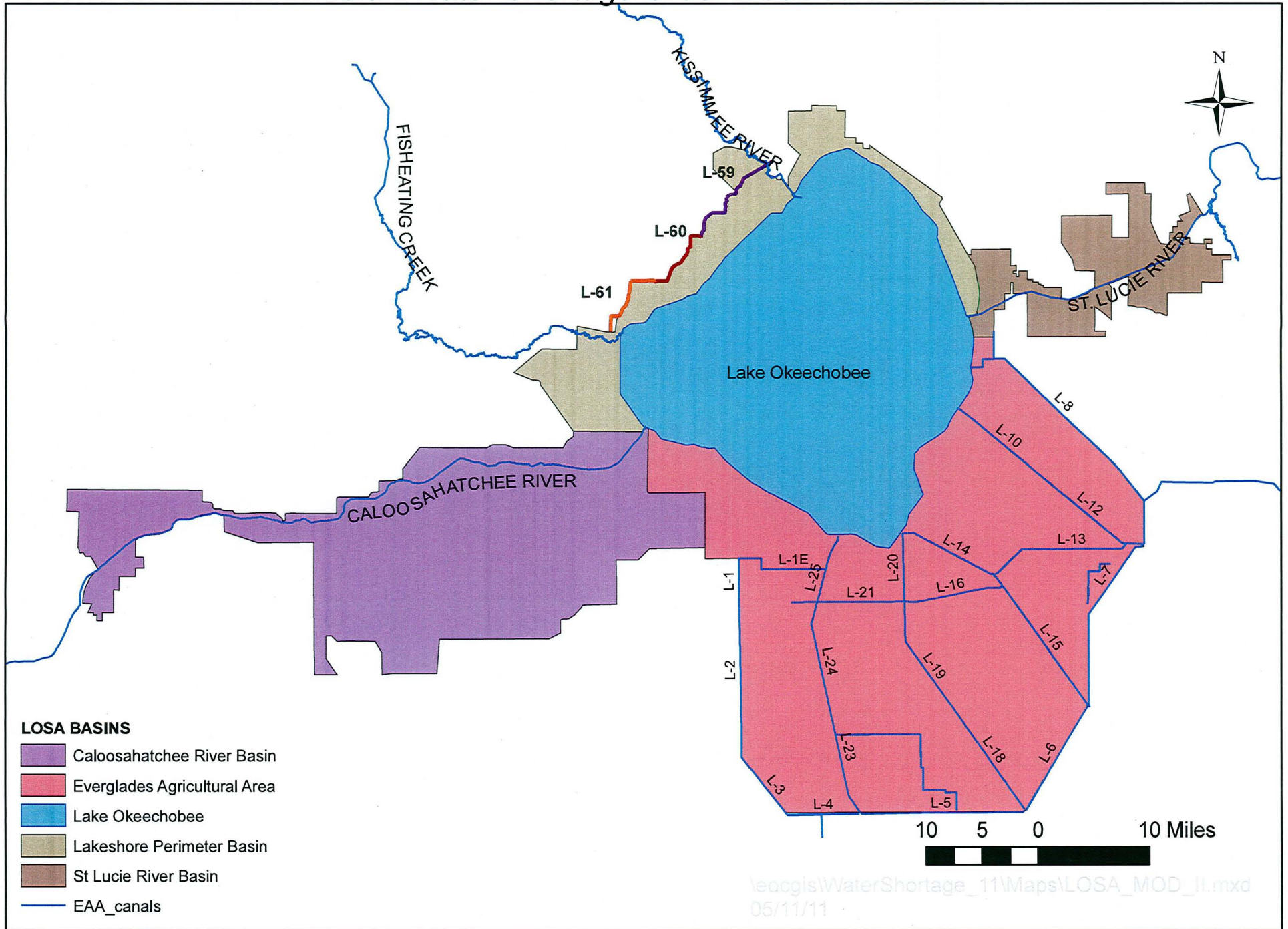
Attest:


District Clerk/Assistant Secretary
May 16, 2011

Legal Form Approved:


Jennifer Bokankowitz, Esq.

LOSA Water Shortage Order Modified Phase III



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.