

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

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Order No.: 2011-079-DAO-WS

IN THE MATTER OF:

Declaration of Modified Phase III
Extreme Water Shortage Restrictions
for Holders of Water Use Permit Nos.
22-00003-W, 22-00052-W, 22-00056-W,
22-00140-W, and 22-00383-W Using
Surface Waters within the Lake
Okeechobee Service Area, including
Lake Okeechobee and Surface Waters
Hydraulically Connected to Lake
Okeechobee within the Lakeshore
Perimeter Water Use Basin within
Glades County

**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, which was subsequently concurred with by the Governing Board, imposing Modified Phase I Moderate Water Shortage Restrictions on surface water users withdrawing water from Lake Okeechobee and the surface waters hydraulically connected to Lake Okeechobee, including within the Lakeshore Perimeter Water Use Basin, as well as within the southern portion of the Indian Prairie Water Use Basin. A copy of Order No. 2011-038-

DA-WS is available from the District Clerk.

2. On May 12, 2011, the Governing Board issued Order No. 2011-061-DAO-WS, imposing Modified Phase III Extreme 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. 2011-061-DAO-WS is available from the District Clerk.

3. Lake Istokpoga and Lake Okeechobee, via the G-207 and G-208 pump stations, are potentially available supply sources for the southern portion of the Indian Prairie Water Use Basin. Lake Istokpoga is the primary surface water source for the Indian Prairie Water Use Basin. However, in drought conditions, the District may pump water from Lake Okeechobee to Central and Southern Florida ("C&SF") Project Canals in the southern portion of this Basin for supply purposes.

4. However, the holders of Water Use Permit Nos. 22-00003-W, 22-00052-W, 22-00056-W, 22-00140-W, and 22-00383-W remained subject to Order No. 2011-038-DAO-WS because water supply deliveries to these users were made from Lake Istokpoga.

5. The holders of Water Use Permit Nos. 22-00003-W, 22-00052-W, 22-00056-W, 22-00140-W, and 22-00383-W are within the agricultural water use class as defined in Rule 40E-21.651, Fla. Admin. Code.

6. The water sources subject to this Order are either Lake Istokpoga or Lake Okeechobee and the surface waters hydraulically connected to Lake Okeechobee within the Lakeshore Perimeter Water Use Basin within Glades County. A map depicting the water use permittees subject to this Order is attached hereto as Exhibit "A."

7. Lake Istokpoga water levels are regulated by the United States Army Corps of Engineers ("USACE"). In general, when Lake Istokpoga's level is low, such that a water

shortage is or may be declared, the southern portion of the Indian Prairie Water Use Basin, south of S-70 and S-75, shifts its supply source to Lake Okeechobee through operation of the G-207 and G-208 pump stations.

8. Lake Istokpoga continues to supply water to the northern portion of the Indian Prairie Water Use Basin in accordance with the USACE's regulation schedule for Lake Istokpoga. When the "floor" of the schedule is reached, water supply releases from S-68 cease.

9. The G-207 and G-208 pump stations are also utilized to provide up to 135 cubic feet per second ("cfs") of water to the southern portion of the Indian Prairie Water Use Basin when Lake Okeechobee's elevation is above 10.2 and 8.0 feet NGVD, respectively.

10. 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. Since the effective date of Order No. 2011-061-DAO-WS, the water levels in Lake Istokpoga have declined.

11. From March 1, 2011 to June 7, 2011, Indian Prairie Region received 6.5 inches of rain, approximately 60% of average. The Lake Okeechobee Region received 6 inches of rainfall, approximately 60% of average, for the same time period. This has led to additional rainfall deficits of 4 inches.

12. The U.S. Climate Prediction Center Drought Monitor reflects that the Indian Prairie and LOSA Regions are experiencing a moderate to extreme drought.

13. Rainfall in the watershed basins which recharge Lake Istokpoga was about 80% of average. Low rainfall levels in these basins have reduced water inflows to Lake Istokpoga.

14. The District conducts Operational Outlook Modeling using 1-in-10 demand based on historic data. When Order No. 2011-061-DAO-WS was issued, the outlook modeling for Lake Istokpoga anticipated water levels would remain above Zone C until close to the end of June, during which time Lake Istokpoga could supply the identified permitted users who withdraw from C&SF Project Canals L-59, L-60, and L-61 for the remainder of the dry season.

15. The identified permittees remained subject to Order No. 2011-038-DAO-WS, and the District modified its operations to begin supplying these users with water from Lake Istokpoga. This allowed the District to stretch the water remaining in Lake Okeechobee by supplying the identified users with surface water from Lake Istokpoga.

16. As of June 8, 2011, Lake Istokpoga's elevation was 37.74 feet NGVD. Based on updated Operational Outlook Modeling, Lake Istokpoga's level is expected to decline below 37.5 feet NGVD by the end of June if above-normal rainfall conditions do not return to the region.

17. As of June 8, 2011, Lake Okeechobee's elevation was 9.76 feet NGVD. However, at this elevation only pump station G-208 can be used to route water to the identified users. At elevations below 10.2 feet NGVD, pump station G-207 declines in efficiency, cavitates, and eventually loses its connection to water supply in Lake Okeechobee due to exposure of the Lake's bottom. Pump station G-208 can operate until Lake Okeechobee reaches an elevation of 8.0 feet NGVD due to the construction of the weir at S-72.

18. Operational Outlook Modeling suggests Lake Okeechobee water levels are expected to remain in the water shortage band through the end of the wet season.

19. In light of the combination of severe drought conditions in both Lake Istokpoga and Lake Okeechobee, the District is attempting to meet the needs of various users in the different geographic areas with available supplies. The District is working with the USACE to authorize a temporary deviation from the Lake Istokpoga regulation schedule for the purpose of allowing the District to continue making water supply releases from Lake Istokpoga. The District is uncertain as to whether the USACE would grant the request.

20. Until such time as a temporary deviation is approved, the District is requesting the USACE authorize the District to release water from Lake Istokpoga until water levels reach Zone C while utilizing G-208 to supply the lower reaches of the C-40 Canal.

21. As a result, there is a significant potential that water supplies from Lake Istokpoga will decline to the extent that sufficient water will not be available to meet the present and anticipated requirements of the identified water use permittees, while protecting the water resources from serious harm.

ULTIMATE FACTS AND CONCLUSIONS OF LAW

22. 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.

23. 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.

24. The Governing Board may impose such restrictions on one or more users of the water resource as is necessary to protect the water resources of the area from serious harm. § 373.175(2), Fla. Stat. (2010).

25. 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.

26. 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.

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

28. 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.

29. In addition to considering that Lake Okeechobee levels have fallen within the Water Shortage Management Band and water levels in Lake Istokpoga are approaching the regulatory floor, 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.

30. As a result, Phase III water shortage restrictions may be authorized requiring cutbacks on consumptive use demands of the holders of Water Use Permit Nos. 22-00003-W, 22-00052-W, 22-00056-W, 22-00140-W, and 22-00383-W for a 1-in-10 year rainfall condition by 45 percent.

31. 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:

32. Modified Phase III Extreme Water Shortage restrictions are hereby imposed. The holders of Water Use Permit Nos. 22-00003-W, 22-00052-W, 22-00056-W, 22-00140-W, and 22-00383-W shall comply with the restrictions set forth in Order No. 2011-061-DAO-WS.

33. 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 Director rescinds the Declaration of Water Shortage.

34. 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 33 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.

35. 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.

36. 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.

37. This Order imposing Modified Phase III Extreme Water Shortage Restrictions shall become effective on June 17, 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.

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

DONE AND SO ORDERED in West Palm Beach, Florida, on this 9th day of June 2011.

SOUTH FLORIDA WATER
MANAGEMENT DISTRICT
By its Governing Board


MELISSA L. MEEKER
Executive Director



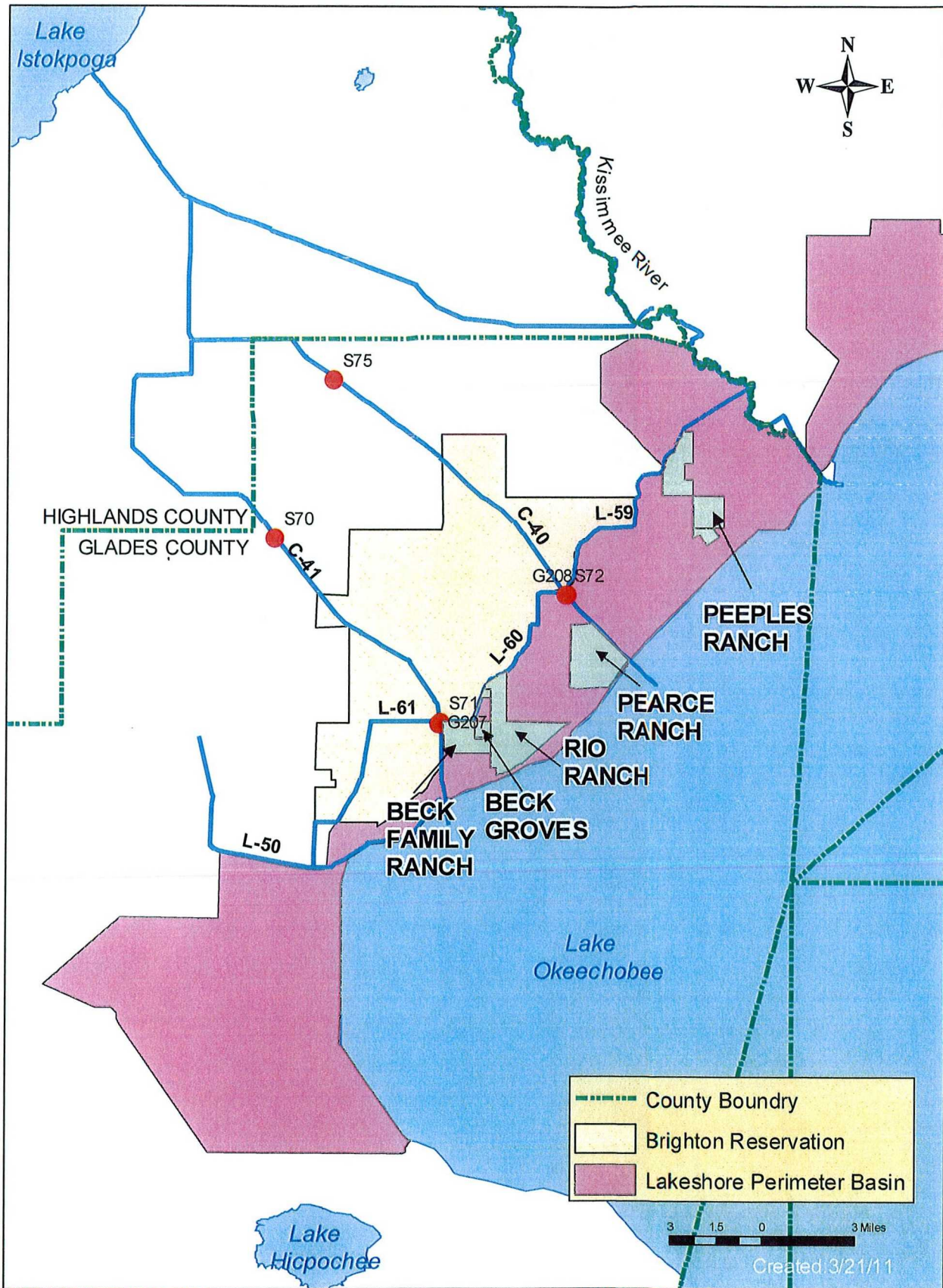
Attest:


District Clerk/Assistant Secretary
June 10, 2011

Legal Form Approved:


Jennifer Bokankowitz, Esq.

Modified Phase III Water Shortage Restrictions



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.