

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

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Order No. 2011-080-DAO-WS
SOUTH FLORIDA
WATER MANAGEMENT DISTRICT

IN THE MATTER OF:

Declaration of Emergency Modified
Phase III Water Shortage Restrictions
for Landscape Irrigation Within the
City of West Palm Beach's Utility
Service Area, Including the City of
West Palm Beach and the Towns of
Palm Beach and South Palm Beach
Located within Palm Beach County

**DECLARATION OF EMERGENCY MODIFIED PHASE III WATER
SHORTAGE RESTRICTIONS**

The Governing Board of the South Florida Water Management District ("District"), after considering recommendations of District staff and being otherwise fully apprised of the matter, issues this Emergency Order pursuant to Sections 373.119, 373.175, 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. On April 14, 2011, the Governing Board issued Order No.: 2011-047-DAO-WS, concurring with and modifying the Executive Director's declaration of Modified Phase I Water Shortage Restrictions for Specified Users using Surface Waters within Portions of the Lower East Coast Region, including the M-Canal Water Use Basin and the C-51 Water Use Basin. The City of West Palm Beach ("City") as a diversion and impoundment user was ordered to cut its withdrawals from the regional system through its Control 2 Pump Station by 15 percent. A copy of the Order is available from the District Clerk.

2. The sources of water affected by this Order include groundwater and surface waters within that portion of the M-Canal Water Use Basin that is located within the City of West Palm Beach's Utility Service Area, which includes the City of West Palm Beach and the Towns of Palm Beach and South Palm Beach. A map depicting the area subject to this Order is attached hereto as Exhibit "A."

3. The landscape irrigation water use class, as defined in Rule 40E-21.651, Fla. Admin. Code, is subject to this Order.

4. The City is authorized by the District, through Consumptive Use Permit No. 50-50-00615-W, to withdraw water to provide drinking water to a service area of approximately 111,000 people, including hospitals, businesses, the Town of Palm Beach, the Town of South Palm Beach, and unincorporated sections of Palm Beach County.

5. The City primarily receives its drinking water from 8 surface water pumps at two locations on Clear Lake. Clear Lake receives discharge from the M-Canal, which is supplied by two 65,000 gallons per minute pumps at the L-8 Tieback Canal, as authorized by Consumptive Use Permit No. 50-07890-W, and which receives water from Lake Okeechobee, as well as rainfall/runoff collected in the City's Water Catchment Area, and flows from the City's Wellfield.

6. 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.

7. Water resources described in previous water shortage orders have generally declined due, in part, to deficient rainfall.

8. From October 1, 2010 to June 2, 2011, about 12 inches of rain fell over Palm Beach County. This is only 39% of the historic average for Palm Beach County.

9. The NOAA Climate Prediction Center ("CPC") recently increased the drought condition in Eastern Palm Beach County from extreme to exceptional; its most severe drought condition. The remainder of the Lower East Coast Region is experiencing an extreme drought. The CPC long-term projection for June indicates an equal chance of below average and above average rainfall for the month. Average rainfall would not significantly ameliorate the rainfall deficit in Palm Beach County.

10. The lack of rainfall has led to low water levels in the City's surface water supply sources. On June 5, 2011, the water level in Clear Lake was 10.55 feet National Geodetic Vertical Datum ("NGVD"). The City estimates Clear Lake is declining at a rate of 0.75 inch per day.

11. On June 5, 2011, the water level in the City's Water Catchment Area, as measured at the Nature Center, was 16.5 feet NGVD. At 16.2 feet NGVD, water supply becomes severely limited and environmental impacts are aggravated. The City estimates the Water Catchment Area declines at a rate of about 0.1 foot every 2 days.

12. As of June 9, 2011, the water level in the M-Canal was 15.95 feet NGVD.

13. A decline in water levels in the City's Water Catchment Area is a concern because it is a key source of water for the City's potable supply and there is a potential for detrimental, long term effects on Snail Kites and their primary food source, the pond apple snail. Specifically, low water levels can reduce pond apple snail recruitment.

14. On June 7, 2011, the City informed the District it had only 22 days of water supply remaining, as predicted by its Oasis model, which assumed no rainfall or inflow from the L-8 Canal.

15. During non-drought dry times, Lake Okeechobee provides surface water via gravity flow to the L-8 Canal, via the C-10A Culvert and S-76 Structure, to recharge the

City's drinking water supply. Flow through C-10A is substantially reduced when the Lake Okeechobee stage falls below 11.75 feet NGVD. On June 8, 2011, Lake Okeechobee water level measured 9.76 feet NGVD. The water level downstream of C-10A was 9.63 ft NGVD on the same date.

16. District staff has reviewed the current conditions of the water resources, the present and anticipated demands, and the present and anticipated water supply. Given the downward trend of the water resources, the imposition of Modified Phase III Water Shortage Restrictions on landscape irrigation uses is necessary to avoid significant harm.

17. In a letter dated June 8, 2011, the City requested the District implement Phase III landscape irrigation restrictions in areas served by its water treatment facility.

18. As a result of the above factors, conditions are such that a significant threat exists to the public's health, safety, and welfare; the health of animals, fish, or aquatic life; public water supply, and commercial, agricultural, and other reasonable uses.

ULTIMATE FACTS AND CONCLUSIONS OF LAW

19. Section 373.083, Fla. Stat., authorizes the Governing Board to issue orders to implement the provisions of Chapter 373, Fla. Stat., this includes emergency orders pursuant to Section 120.569(2)(n), Fla. Stat.

20. Sections 373.175 and 373.246, Fla. Stat., authorize the Governing Board to issue orders declaring the existence of a water shortage.

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

22. The Governing Board is authorized to adopt a water shortage plan to regulate the withdrawal and use of water so as to protect the water resources of the

District. § 373.246, Fla. Stat. (2010).

23. In accordance with the water shortage plan, the Governing Board may impose such restrictions on one or more water use classes as may be necessary to protect the water resources of the area from serious harm. § 373.246(3), Fla. Stat. (2010).

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

25. An emergency exists when immediate action is necessary to protect, public health, safety, welfare; the health of animals, fish or aquatic life; the works of the District; a public water supply, or recreational, commercial, industrial, agricultural or other reasonable uses of land and water resources. Fla. Admin. Code R. 40E-1.611.

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. Based on the findings of fact recited above and pursuant to Sections 373.119, 373.175, and 373.246, Fla. Stat., it is hereby concluded that emergency conditions exist that pose an immediate danger to the public health, safety, or welfare; the health of animals, fish, or aquatic life; public water supply; or recreational, commercial,

industrial, agricultural, or other reasonable uses and requires an immediate order of the District imposing modified phase III water shortage restrictions on landscape irrigation use class in the City of West Palm Beach's Utility Service Area, which includes the City of West Palm Beach and the Towns of Palm Beach and South Palm Beach.

ORDER

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

30. Modified Phase III restrictions are hereby imposed on all landscape irrigation uses of surface and groundwater within the area depicted on Exhibit "A."

31. All landscape irrigation water use is subject to the Modified Phase III landscape irrigation restrictions set forth in Exhibit "B."

32. Permitted water users are required 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.

33. 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.

34. 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 District 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.

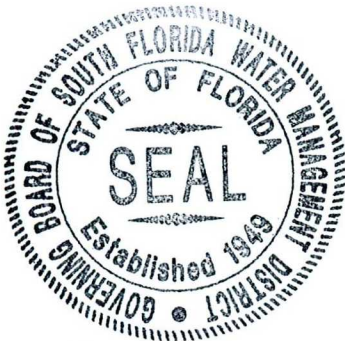
35. This Order may be modified or amended by action of the Governing Board, the Executive Director, or the Executive Director's designee, as appropriate, in order to respond to changed resource conditions.

36. This Order shall become effective immediately upon execution 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.


NOTICE OF RIGHTS

Any party substantially affected by this order has the right to seek judicial review of it under Section 120.62, Fla. Stat., by filing a notice of appeal under Rule 9.110, Fla. Admin. Code, with the District Clerk at 3301 Gun Club Road, West Palm Beach, Florida 33406, and by filing a copy of the notice of appeal accompanied by the applicable filing fees with the appropriate district court of appeal. The notice of appeal must be filed within thirty days after this Order is filed with the District Clerk.


DONE AND SO ORDERED in West Palm Beach, Florida, on this 10th day of June 2011.



ATTEST:

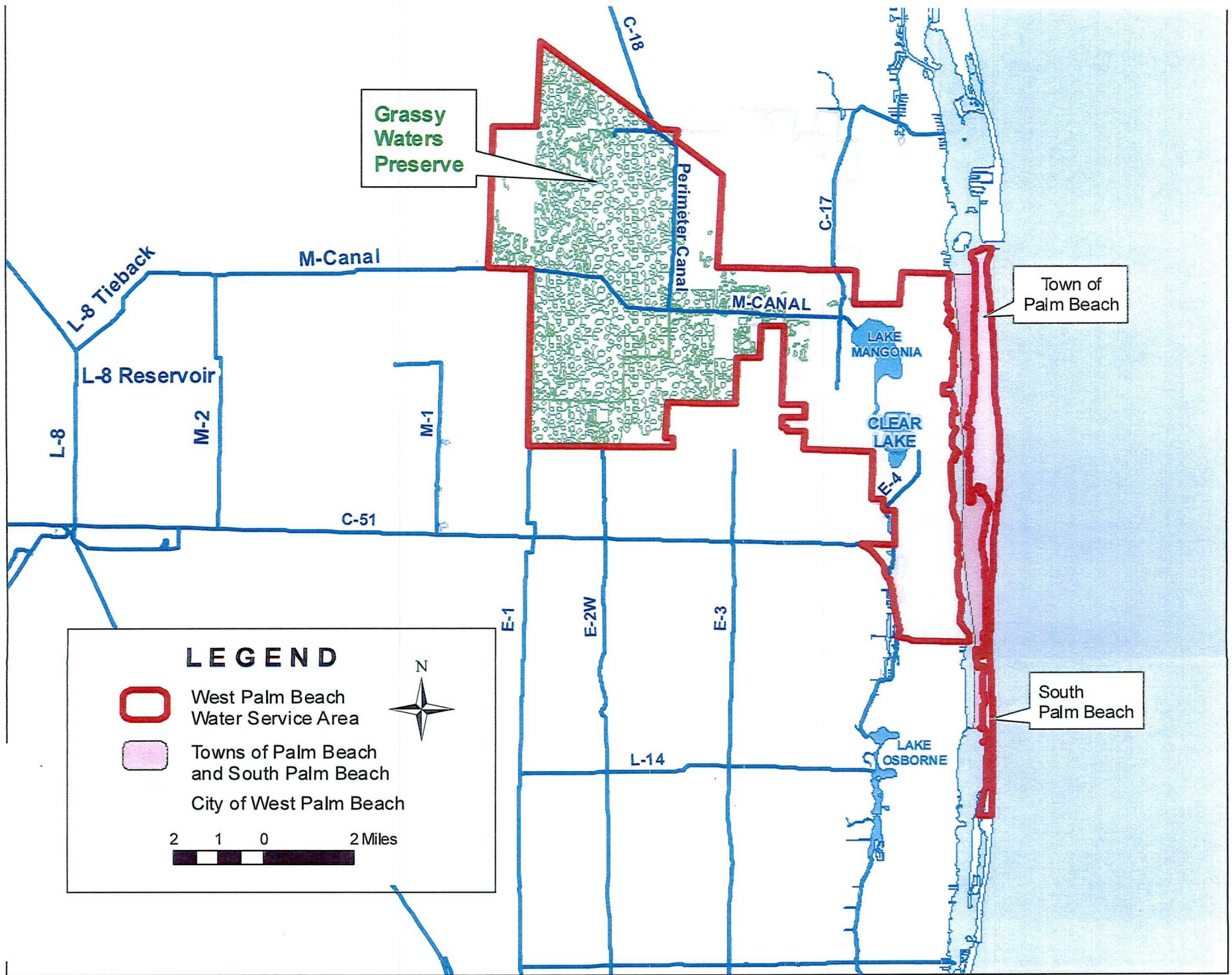

District Clerk/Asst. Sect
Date: June 10, 2011

SOUTH FLORIDA WATER
MANAGEMENT DISTRICT
By its Governing Board


MELISSA L. MEEKER
Executive Director

Legal Form Approved:


Jennifer Bokankowitz, Esq.



City of West Palm Beach Water Service Area

MODIFIED PHASE III LANDSCAPE IRRIGATION RESTRICTIONS

1. Users conducting landscape irrigation with reclaimed water are not restricted.
2. Landscape irrigation is prohibited between the hours of 10:00 a.m. and 4:00 p.m., except as otherwise provided herein.
3. Irrigation of existing landscaping shall comply with the following provisions:
 - a. Even addresses, installations with irrigation systems that irrigate both even and odd addresses within the same zones, such as multi-family units and homeowners' associations, and rights-of-way or other locations with no address, shall have the opportunity to accomplish necessary landscape irrigation only on Thursday.
 - b. Odd addresses shall have the opportunity to accomplish necessary landscape irrigation only on Wednesday.
4. Irrigation of new landscaping shall comply with the following provisions:
 - a. On the day the new landscaping is installed, the new landscaping may be irrigated once without regard to the normally allowable watering days and times. Irrigation of the soil immediately prior to the installation of the new landscaping is also allowable without regard to the normal allowable watering days and times.
 - b. The ninety (90) day period begins the day the new landscaping is installed. The new landscaping shall be installed within a reasonable time from the date of purchase, which may be demonstrated with a dated receipt or invoice
 - c. Irrigation of new landscaping which has been in place for thirty (30) days or less may be accomplished on Monday, Tuesday, Wednesday, Thursday, Saturday, and Sunday.

d. Irrigation of new landscaping which has been in place for thirty-one (31) to ninety (90) days may be accomplished on Monday, Wednesday, Thursday, and Saturday.

e. Irrigation of the new landscaping is limited to areas containing the new landscaping only. An entire zone of an irrigation system shall only be utilized for landscape irrigation under this paragraph if the zone in question is for an area that contains at least 50% new landscaping. If a zone contains less than 50% new landscaping, or if the new landscaping is in an area that will not typically be irrigated by an irrigation system, only the individual new plantings are eligible for additional irrigation under this paragraph. Targeted watering may be accomplished by low volume hand watering, or any appropriate method which isolates and waters only the new landscaping.

5. Landscape irrigation systems may be operated during restricted days and/or times for cleaning, maintenance, and repair purposes with an attendant on site in the area being tested. Landscape irrigation systems may routinely be operated for such purposes no more than once per week, and the run time for any one test should not exceed 10 minutes per zone.

6. Landscape irrigation for the purpose of watering-in fertilizers, insecticides, pesticides, fungicides and herbicides, where such watering-in is recommended by the manufacturer, or by federal, state or local law, or best management practices, shall be allowed under the following conditions:

a. Such watering-in shall be limited to one application unless the need for more than one application is stated in the directions for application specified by the manufacturer; and

b. Such watering-in shall be accomplished during normally allowable watering days and times set forth in Paragraphs 2 through 4, above, unless a professional licensed applicator has posted a temporary sign containing the date of application and the date(s) of needed watering-in activity.

7. Any plant material may be watered using low volume irrigation, micro-irrigation, low-volume hand watering methods, and rain barrels, cisterns, or other similar rain-harvesting devices without regard to the watering days or times allowed.