

BEFORE THE GOVERNING BOARD OF THE
SOUTH FLORIDA WATER MANAGEMENT DISTRICT

IN RE:

ORDER NO. 2011-134-DAO-WS

Governing Board Concurrence
with the Granting of Temporary
Variances from Water Shortage
Restrictions Imposed by Water
Shortage Order Nos: 2011-039-
DAO-WS, 2011-40-DAO-WS
and 2011-047-DAO-WS

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SOUTH FLORIDA
WATER MANAGEMENT DISTRICT

**FINAL ORDER OF GOVERNING BOARD CONCURRENCE WITH ACTION ON
WATER SHORTAGE VARIANCE APPLICATIONS**

This cause having come before the Governing Board of the South Florida Water Management District ("District"), at its August 11, 2011 meeting for entry of a Final Order, and upon staff's recommendation, and being fully informed otherwise, the Governing Board issues this Order of Concurrence containing the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. Since November 11, 2010, the District has entered a series of Water Shortage Orders due to serious drought conditions throughout the District.
2. On June 8, 2011, the Executive Director designated her signature authority to Robert Brown, Assistant Executive Director, Terrie Bates, Director of Water Resources, and Sharon Trost, the Director of Regulation, to take action on all applications for variances from present and future Water Shortage Orders throughout the duration of the 2011 Drought, pursuant to the authority in Rule 40E-21.275, Florida

Administrative Code ("Fla. Admin. Code"). A true and correct copy of the designation is attached hereto as Exhibit A.

3. Members of the Water Resource Regulation Department staff reviewed applications for variances from Water Shortage Order Nos. 2011-039-DAO-WS, 2011-040-DAO-WS and 2011-047-DAO-WS. Those applications that were determined to be properly submitted pursuant to the District rules and the facts alleged therein, entitled the applicants to the requested variances. A list of the Temporary Variances granted, along with the Applicants' names, and the specific authorizations granted is attached hereto as Exhibit B.

4. Pursuant to subsection 373.083(5), Florida Statutes, and the District Policies and Procedures, Section 101.22(b), the District's Governing Board delegated to the Executive Director and General Counsel, authority to execute final orders following Governing Board action.

CONCLUSIONS OF LAW

5. An applicant for a variance must provide reasonable assurances that the variance will not otherwise be harmful to the water resources of the District and affirmatively demonstrate at least one of the following:

- a. The variance is essential to protect health or safety;
- b. Compliance with the particular rule or order from which a variance is sought will require measures which, because of their extent or cost, cannot be accomplished within the anticipated duration of the shortage;

c. Alternative restrictions which achieve the same level of demand reduction as the restrictions from which a variance is sought are available and are binding and enforceable;

d. The applicant is a public or private utility that demonstrates that special circumstances exist which necessitate the issuance of a variance; or,

e. The applicant's source of water includes an approved aquifer storage and recovery installation or a water reclamation project. Fla. Admin. Code R. 40E-21.275(2).

6. Applications which require immediate action and which comply with criteria for issuance, the variance application, and variance limiting conditions, may be temporarily granted by the Executive Director or his/her designee. Fla. Admin. Code R. 40E-21.275(5)(b).

7. Temporary variances granted by the Executive Director, or his/her designee, must be presented to the Governing Board at its next regularly scheduled meeting for concurrence, rejection, or modification. Id.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is hereby ORDERED:

8. The Governing Board hereby concurs with the action taken by the Executive Director, or their designee, in granting Temporary Variances from Water Shortage Restrictions affecting the areas designated within Water Shortage Order Nos. 2011-039-DAO-WS, 2011-040-DAO-WS and 2011-047-DAO-WS.

9. Temporary Variances, listed on the attached Exhibit B, shall expire upon completion of stated term, or, if the Temporary Variance is for the duration of the water shortage, upon a declaration by the Governing Board that a water shortage in the affected area no longer exists and thereby rescinds the Water Shortage Order or when a more restrictive water shortage declaration is made in the affected areas.

10. A Notice of Rights is attached as Exhibit C.


DONE AND SO ORDERED in West Palm Beach, Florida, on this 11th day of August, 2011.



SOUTH FLORIDA WATER
MANAGEMENT DISTRICT
By its Governing Board

CAROLYN S. ANSAY
General Counsel

Attest:


District Clerk/Assistant Secretary
August 15, 2011

Legal Form Approved:


Jennifer Bokankowitz, Esq.

MEMORANDUM

TO: Robert Brown, Assistant Executive Director
Deena Reppen, Chief of Staff
Terrie Bates, Director of Water Resources
Sharon Trost, Director of Regulation

FROM: Melissa Meeker, Executive Director

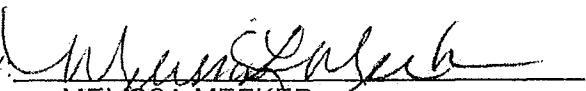
DATE: June 8, 2011

SUBJECT: **Designation from The Executive Director to the Assistant Executive Director, the Director of Water Resources, and the Director of Regulation Regarding Applications for Variances from Present and Future Water Shortage Orders throughout the duration of the 2011 Drought.**

I am hereby designating the Assistant Executive Director, the Director of Water Resources, and the Director of Regulation with the authority to act on applications for variances from water shortage restrictions pursuant to Rule 40E-21.275, Florida Administrative Code (Fla. Admin. Code).

Until further notice, or until current or future Water Shortage Orders, regarding the 2011 Drought are rescinded, the Assistant Executive Director, the Director of Water Resources, and the Director of Regulation shall have the authority to take action on all applications for variances from current and future Water Shortage Orders, throughout the duration of the 2011 Drought, which are filed pursuant to Rule 40E-21.275, Fla. Admin. Code. Such action is subject to concurrence, modification, or denial by the Governing Board at its next regular monthly meeting.

This designation is given to the Assistant Executive Director, the Director of Water Resources, and the Director of Regulation for the express purpose of providing a quick turnaround time for processing applications for variances from current and future Water Shortage Orders throughout the duration of the 2011 Drought.

BY: 
MELISSA MEEKER
Executive Director
South Florida Water Management District

TBS/kar

C:	Jayne Bergstrom	Jennifer Bokankowitz	Yvette Bonilla	Phil Flood
	Cynthia Gefvert	Thomas Genovese	Ed Hernandez	Peter Kwiatkowski
	Pam Mac'Kie	Jacki McGorty	Ximena Pernet	Gary Ritter
	Jesus Rodriguez	Elizabeth Ross	Kim Shugar	Susan Sylvester
	Clarence Tears	Ricardo Valera	Reagan Walker	Elbert Waters
	Cecelia Weaver	Benita Whalen	Ed Yaun	

EXHIBIT A

WATER SHORTAGE VARIANCE APPROVALS

FINAL ORDERS CONCURRING WITH THE GRANTING OF TEMPORARY VARIANCES FROM WATER SHORTAGE ORDER RESTRICTIONS IMPOSED.

As provided in Rule 40E-21.275, F.A.C., an applicant for a variance must provide reasonable assurances that the variance requested will not be harmful to the water resources of the District and demonstrate that specified circumstances exist.

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1. PERMITTEE: VILLAGEWALK OF BONITA SPRINGS PERMIT NO. 36-00061-W
PROJECT: VILLAGEWALK OF BONITA SPRINGS HOMEOWNERS ASSOCIATION VARIANCE NO. 4804

LEE COUNTY

DUE TO SYSTEM CONSTRAINTS, THE APPLICANT IS AUTHORIZED TO IRRIGATE THE SPECIFIED AREAS ON THE DAYS ASSIGNED TO ODD NUMBER ADDRESSES, FROM 12:00 AM TO 9:00 AM. IRRIGATION OF ALL OTHER STREETS AND COMMON AREAS WITHIN THE VILLAGEWALK OF BONITA SPRINGS HOA HAVE TO BE PERFORMED ON THE DAYS AND SCHEDULE FOR EVEN NUMBER ADDRESSES AND NO NUMBER ADDRESSES. NO LANDSCAPE AREA WILL BE IRRIGATED MORE THAN TWICE A WEEK. THIS VARIANCE WILL ONLY APPLY TO THE CURRENT RESTRICTION AND THE APPLICANT MUST TAKE ALL STEPS NECESSARY TO COMPLY WITH RESTRICTIONS SUBSEQUENT TO THE END OF THE CURRENT RESTRICTION AND PRIOR TO THE NEXT WATER SHORTAGE DECLARATION

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2. PERMITTEE: LARRY H. WALSH PERMIT NO. N/A
PROJECT: LARRY H. WALSH VARIANCE NO. 4810

LEE COUNTY

DUE TO HEALTH ISSUES, APPLICANT IS AUTHORIZED TO IRRIGATE FROM 7:00 PM TO 11:00 PM ON DAYS ASSIGNED TO ADDRESSES ENDING IN NUMBER 9. NO LANDSCAPE AREA WILL BE IRRIGATED MORE THAN TWICE A WEEK.

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3. PERMITTEE: HAMMOCK RESERVE PERMIT NO. 50-03814-W
PROJECT: HAMMOCK RESERVE HOMEOWNERS ASSOCIATION VARIANCE NO. 4803

PALM BEACH COUNTY

DUE TO SYSTEM CONSTRAINTS, THE APPLICANT IS AUTHORIZED TO IRRIGATE THE SPECIFIED AREAS ON THURSDAYS AND SUNDAYS AND SPECIFIED AREAS ON WEDNESDAYS AND SATURDAYS. THE APPLICANT WILL COMPLY WITH THE HOURS OF IRRIGATION CONTAINED IN THE WATER SHORTAGE ORDER. NO LANDSCAPE AREA WILL BE IRRIGATED MORE THAN TWICE A WEEK. THIS VARIANCE ONLY APPLIES TO THE CURRENT RESTRICTIONS AND THE APPLICANT MUST TAKE ALL NECESSARY STEPS TO COMPLY WITH RESTRICTIONS SUBSEQUENT TO THE END OF THE CURRENT RESTRICTION AND PRIOR TO THE NEXT WATER SHORTAGE DECLARATION

WATER SHORTAGE VARIANCE APPROVALS

4. PERMITTEE: THE CITY OF WEST PALM BEACH PERMIT NO. 50-07890-W
PROJECT: THE CITY OF WEST PALM BEACH CONTROL PUMP VARIANCE NO. 4811
2

PALM BEACH COUNTY
DUE TO CLERICAL ISSUES, HISTORIC DATA SUBMITTED BY THE APPLICANT TO THE DISTRICT DURING JANUARY 2003 THROUGH DECEMBER 2006 FOR PERMITTING PURPOSES WERE NOT INCLUDED IN PAST WATER USE REVIEWS CAUSING THE AMOUNT OF WATER USE TO BE UNDERESTIMATED. ALLOCATIONS HAVE BEEN REVISED (IN MILLION GALLONS/MONTH) TO JULY 850, AUGUST 1282.27, SEPTEMBER 407.08, OCTOBER 981.02, NOVEMBER 1155.49, DECEMBER 729.03.

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.