

BEFORE THE GOVERNING BOARD OF THE
SOUTH FLORIDA WATER MANAGEMENT DISTRICT

Order No. 2011-135-DAO-WS

IN THE MATTER OF:

Governing Board Concurrence with
Executive Director's Modification of
Declaration of Modified Phase I
Water Shortage Restrictions for the
Golf Course Use Class Withdrawing
From Surface and Groundwater
Within the South Florida Water
Management District (Concurrence
With Order No. 2011-115-DAO-WS)

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SOUTH FLORIDA
WATER MANAGEMENT DISTRICT

**FINAL ORDER OF GOVERNING BOARD CONCURRENCE WITH
EXECUTIVE DIRECTOR'S MODIFICATION OF MODIFIED PHASE I WATER
SHORTAGE RESTRICTIONS FOR THE GOLF COURSE USE CLASS**

This matter came before the Governing Board of the South Florida Water Management District ("District") on August 11, 2011 for concurrence with Order No. 2011-115-DAO-WS, which was issued by the District's Executive Director. After being otherwise fully apprised of the matter, the Governing Board issues this Final Order of Governing Board Concurrence, containing the following Findings of Fact, Ultimate Facts, and Conclusions of Law.

FINDINGS OF FACT

1. On March 21, 2011, the Executive Director issued Water Shortage Order No. 2011-039-DAO-WS, imposing modified phase I water shortage restrictions on the golf course use class withdrawing from surface and groundwater within Broward, Palm Beach, Miami-Dade, Monroe, St. Lucie, Martin, Okeechobee, Glades, Hendry, Lee, and Collier Counties. Order No. 2011-039-DAO-WS also imposed modified phase II water shortage restrictions on the landscape irrigation use class withdrawing surface and groundwater

throughout the jurisdictional boundaries of the District. A copy of Order No. 2011-039-DAO-WS is available from the District Clerk.

2. On April 14, 2011, the Governing Board concurred with the golf course use restrictions contained in Order No. 2011-039-DAO-WS and modified the landscape irrigation restrictions in that Order for users located within specified areas. A copy of Order No. 2011-046-DAO-WS is available from the District Clerk.

3. On August 2, 2011, the Executive Director issued Order No. 2011-115-DAO-WS, modifying Order No. 2011-039-DAO for the golf course water use class. Order No. 2011-115-DAO-WS, attached hereto as Exhibit A, authorizes golf course permittees to apply for a temporary variance from the existing irrigation cut-backs in order to re-sod or sprig, change to more efficient grasses, and repair turf damage during the remainder of the wet season when supplemental irrigation needs are minimized due to projected rainfall.

4. Given the cumulative assessment of surface and groundwater availability in the affected regions and climate forecasts, this modification was issued in an attempt to balance the economic harm the golf course use class experiences during the water shortage with the reduced needs of the resource during the wet season. The limited modification of Order No. 2011-039-DAO-WS was found necessary in order to provide a provision for the golf course water use class to re-sod, sprig, and/or seed golf course turf or otherwise carry out necessary golf course rehabilitation projects.

ULTIMATE FACTS AND CONCLUSIONS OF LAW

5. The Governing Board has authority to adopt a water shortage plan to regulate the withdrawal and use of water and protect the water resources of the District. § 373.246, Fla. Stat. (2010).

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

7. The purpose of the water shortage plan is, among other items, to assure equitable distribution of the water resources to all users consistent with the goal of minimizing adverse economic, social and health related impacts. Fla. Admin. Code R. 40E-21.011(1).

8. Considering the above Findings of Fact, a limited modification of Order No. 2011-115-DAO-WS was found to be warranted to allow the golf course use class to utilize the allocations stated in their permits in order to seed and/or re-sod golf courses and minimize adverse economic impacts.

9. Pursuant to subsection 373.083(5), Fla. Stat., and 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.

10. A Notice of Rights is attached hereto as Exhibit B.

ORDER

Based on the foregoing Findings of Fact and Ultimate Facts and Conclusions of Law, the Governing Board of the South Florida Water Management District hereby concurs with the actions taken by the Executive Director of the District in issuing Water Shortage Order No. 2011-115-DAO-WS. The Executive Director, or Executive Director's designee, is authorized to grant variances submitted to the District pursuant to Order No. 2011-115-DAO-WS.

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.

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

Order No. 2011-115-DAO-WS

IN THE MATTER OF:

Modification of the Declaration of Modified Phase I Water Shortage Restrictions for the Golf Course Use Class Withdrawing from Surface and Groundwater within the South Florida Water Management District (Modifying Water Shortage Order No. 2011-039-DAO-WS).

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**MODIFICATION OF DECLARATION OF MODIFIED PHASE I WATER
SHORTAGE RESTRICTIONS FOR THE GOLF COURSE USE CLASS
(MODIFYING ORDER NO. 2011-039-DAO-WS)**

The Executive Director of the South Florida Water Management District ("District"), after considering recommendations of District staff and being otherwise fully apprised of the matter, issues this Order pursuant to Sections 373.083, 373.175, and 373.246, Florida Statutes, and Chapter 40E-21, Florida Administrative Code, based on the following Findings of Fact and Ultimate Facts and Conclusions of Law.

FINDINGS OF FACT

1. On March 21, 2011, the Executive Director issued Water Shortage Order No. 2011-039-DAO-WS, imposing modified phase I water shortage restrictions on the golf course use class withdrawing from surface and groundwater within Broward, Palm Beach, Miami-Dade, Monroe, St. Lucie, Martin, Okeechobee, Glades, Hendry, Lee and Collier Counties. Order No. 2011-039-DAO-WS also imposed modified phase II water shortage restriction on the landscape irrigation use class withdrawing surface and groundwater throughout the jurisdictional boundaries of the District. A copy of Order

No. 2011-039-DAO-WS is available from the District Clerk.

2. On April 14, 2011, the Governing Board issued Order No. 2011-046-DAO-WS, concurring with and modifying the landscape irrigation restrictions in Order No. 2011-039-DAO-WS for users located within specified areas. A copy of Order No.: 2011-046-DAO-WS is available from the District Clerk.

3. The Governing Board delegated authority to the Executive Director to modify the water shortage order if the District's monitoring of water conditions and water shortage plan implementation reasonably demonstrated that modification of the Board's order was warranted and necessary.

4. The sources of water affected by this Order are the surface and groundwater sources within Broward, Palm Beach, Miami-Dade, Monroe, St. Lucie, Martin, Okeechobee, Glades, Hendry, Lee and Collier Counties. A map depicting the area subject to this Order is attached hereto as Composite Exhibit A.

5. The golf course water use class, identified in Rule 40E-21.651, Fla. Admin. Code, is subject to this Order.

6. Golf course users located in the above-listed counties were required, pursuant to the above referenced orders, to implement a management plan that reduced total irrigation by 15% of their monthly AFSIRS-calculated allocation and report pumpage volumes to the District on a weekly basis.

7. Order No. 2011-039-DAO-WS authorizes additional irrigation days for the landscape irrigation use class in order to establish new landscaping. The golf course use class does not have a similar provision for re-sodding, sprigging, and/or seeding.

8. Golf courses generally re-sod or sprig, change to more efficient grasses, and repair turf damage during the summer months when attendance at golf courses is reduced and precipitation is higher.
9. District staff has been monitoring the conditions of the water resources and the needs of the water users as required by Rule 40E-21.221, Fla. Admin. Code.
10. Since the effective date of Order Nos. 2011-039-DAO-WS and 2011-046-DAO-WS, the water resource concerns described in that order have improved somewhat due to rain.
11. However, from October 2, 2010 to August 1, 2011, an average of 25.72 inches of rain fell across the District, leaving a rainfall deficit of 11.31 inches.
12. Surface water levels have increased in Water Conservation Areas 1, 2A, and 3A in the Lower East Coast Region and the C-23, 24, and 25 Canals in the Upper East Coast Region. Surface water flows have also increased in the Caloosahatchee River within the last 45 days.
13. Groundwater levels are improving with recent rainfall. However, the United States Geological Survey reports nearly 50% of the monitor wells within the above-listed counties have water levels in the lowest 10th percentile for their respective periods of record for this time of year.
14. The National Oceanic and Atmospheric Administration's Climate Prediction Center is forecasting above average rainfall for August and for August through October.
15. The remainder of the wet season is an ideal time to re-sod, sprig, and/or seed portions of golf courses that suffered turf damage during the water shortage

because the amount of supplemental irrigation needed is minimized due to projected rainfall.

ULTIMATE FACTS AND CONCLUSIONS OF LAW

16. The Governing Board has authority to adopt a water shortage plan to regulate the withdrawal and use of water and protect the water resources of the District. § 373.246, Fla. Stat. (2010).

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

18. The purpose of the water shortage plan is, among other items, to assure equitable distribution of the water resources to all users consistent with the goal of minimizing adverse economic, social and health related impacts. Fla. Admin. Code R. 40E-21.011(1).

19. Rule 40E-21.271, Fla. Admin. Code, recognizes the restrictions contained in Part V of Chapter 40E-21, Fla. Admin. Code, are general water use restrictions and also authorizes 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.

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

21. Given the cumulative assessment of surface and groundwater availability in the affected regions and climate forecasts, this action attempts to balance the economic harm to golf course users experienced during the water shortage with the reduced needs of the resource during the wet season.

22. Considering the above Findings of Fact, a limited modification of Order Nos. 2011-039-DAO-WS is warranted to allow the golf course use class to utilize the allocations stated in their permits in order to seed and/or re-sod golf courses and minimize adverse economic impacts.

ORDER

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

23. Golf course permittees needing to undertake re-sodding, sprigging, or other similar course rehabilitation activities may request a variance from the provisions of Order No. 2011-039-DAO-WS by filing an application for variance (available at www.sfwmd.gov), but must conform to the water use restrictions until the variance application is acted upon by the District.

24. Staff will review the application and, after considering local and regional water resource conditions, the District may issue a variance authorizing the golf course permittee to withdraw ground and/or surface water consistent with the allocations contained in their respective permits.

25. Actual pumpage data shall continue to be totaled and reported to the District on a weekly basis through the District's water shortage webpage available at www.sfwmd.gov by noon every Monday for the preceding week.

26. Permitted water users are requested to continue submitting water usage monitoring data in accordance with permit conditions. The Director of the Water Use Bureau 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

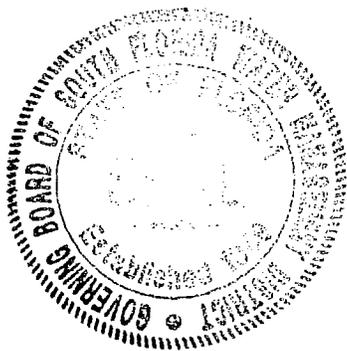
data submittals at increased frequencies, as determined appropriate.

27. The Executive Director, or Executive Director's designee, is authorized to grant variances pursuant to this Order.

28. This Order shall become effective on August 7, 2011 and shall expire on October 31, 2011, unless modified, rescinded, or extended by the Governing Board, Executive Director, or Executive Director's designee, if the circumstances set forth in Subsection 40E-21.291(5), Fla. Admin. Code, are present. Upon expiration of this Order or any variance issued pursuant to this Order, the golf course permittee shall comply with the water shortage restrictions contained in Order No. 2011-039-DAO-WS, unless Order No. 2011-039-DAO-WS has been modified, rescinded, or otherwise superseded.

29. A Notice of Rights is attached hereto as Exhibit "B."

DONE AND SO ORDERED in West Palm Beach, Florida, on this 2nd day of August 2011.



Attest:


District Clerk/Assistant Secretary
August 2, 2011

SOUTH FLORIDA WATER
MANAGEMENT DISTRICT
By its Executive Director


ROBERT BROWN
Assistant Executive Director
Executive Director's designee

Legal Form Approved:


Jennifer Bokankowitz, Esq.

MODIFICATION OF MODIFIED PHASE I GOLF COURSE WATER RESTRICTIONS

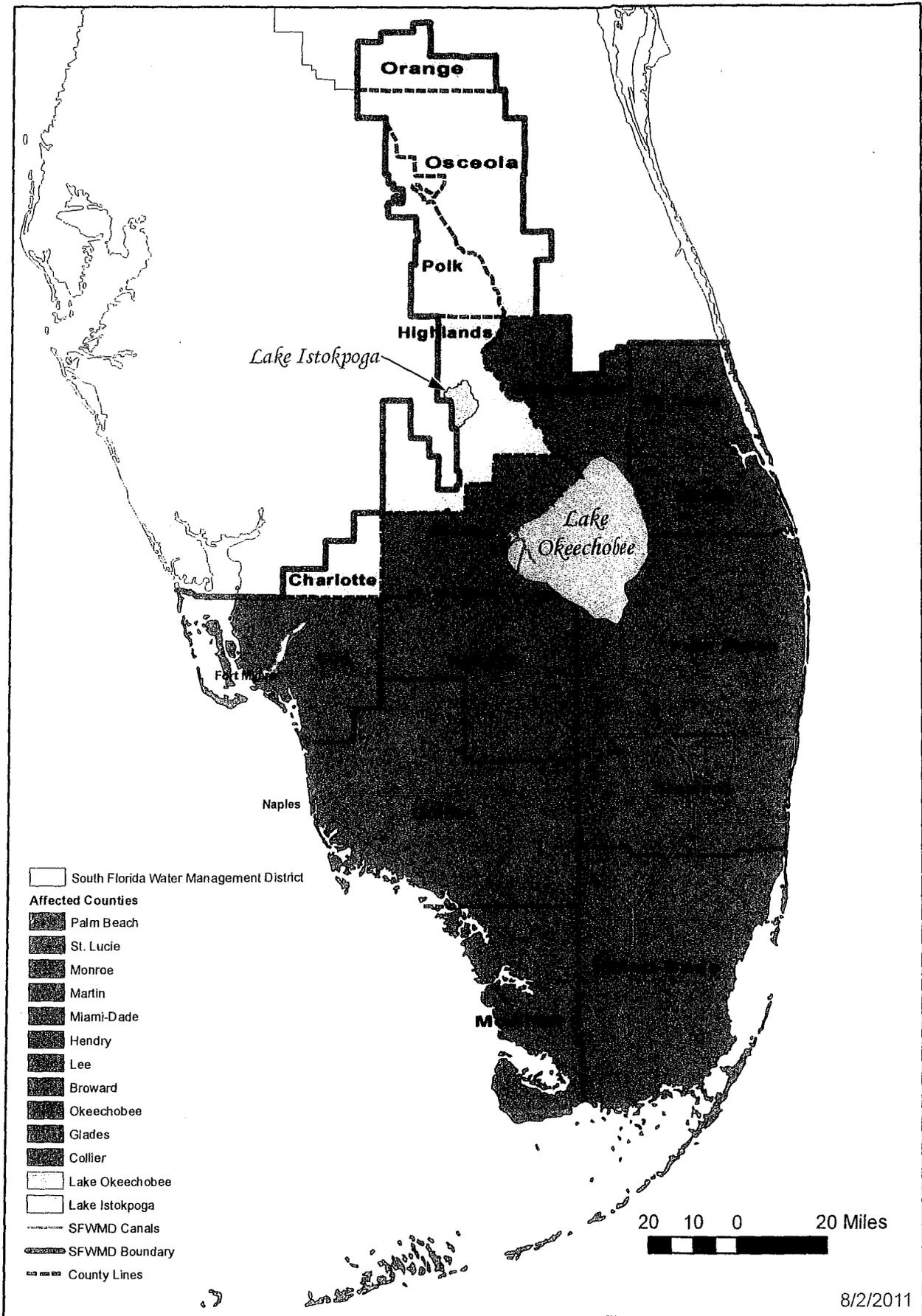


Exhibit A

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.

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5. A statement of all disputed issues of material fact. If there are none, the petition must so indicate.
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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.
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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.

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