

BEFORE THE GOVERNING BOARD OF THE
SOUTH FLORIDA WATER MANAGEMENT DISTRICT

Order No.: 2012-065-DAO-WS

IN THE MATTER OF:

Rescission of Order No.
2011-222-DAO-WS, Declaration
of Water Shortage Warning for
All Use Classes Withdrawing from
Surface and Groundwater within
the boundaries of the South Florida
Water Management District

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SOUTH FLORIDA
WATER MANAGEMENT DISTRICT

ORDER RESCINDING WATER SHORTAGE WARNING

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 Order pursuant to Sections 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 November 18, 2011, the District's Governing Board issued a "Declaration of Water Shortage Warning" for the all use classes withdrawing from surface and groundwater within the boundaries of the South Florida Water Management District. Said Order encouraged all water users to practice efficient water use. A copy of Order No. 2011-222-DAO-WS is available from the District Clerk.

2. 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.

3. Since the effective date of Order No. 2011-222-DAO-WS, surface and groundwater levels throughout the District have significantly improved. From February 1, 2012 to May 31, 2012, the District received an average of 13.05 inches of rainfall, or 111% of the 30-year average. Most of Broward and Miami-Dade counties received its heaviest April and May rains in at least 30 years (over 230% of the historical average). This rainfall has led to improved surface and groundwater conditions across the District.

4. Monitoring data compiled by District staff shows an improvement in lake stages within the Upper Chain of Lakes. As of June 1, 2012, stages in the Upper Chain of Lakes were within 0.25 ft of regulation stage with release being made to the Kissimmee River via S-65. Since the June 1st regulatory low, the Chain of Lakes stages have begun their normal wet season rises in response to rainfall.

5. Groundwater levels in the Lower West Coast Region have risen in all aquifers, and continue to rise. Sixty-five percent of the United States Geological Survey ("USGS") Surficial and Lower Tamiami aquifer wells are in, or above, the 30th percentile for their period of record; the rest remain below this level but show an upward trend in water levels. Sixty-three percent of Sandstone aquifer water levels are in or above the 30th percentile for their period of record. The rest of the monitor wells in the Sandstone aquifer are below this level but show an upward trend in water levels. As of June 1, 2012, the water level in monitor well L-2186, located in the Sandstone aquifer, measured 4.5 feet NGVD, 9.5 feet above the maximum developable limit for said aquifer.

6. Water level stages in the Upper East Coast Region have also increased. On June 11, 2012, the water levels in the C-23, C-24, and C-25 Canals measured

21.91, 19.53, and 19.08 feet NGVD, respectively. Groundwater levels in USGS wells STL-125, M-1048, M-1004, and M-1261 remain in the 30th to 90th percentiles for their periods of record.

7. As of June 1, 2012, the level in the WCA-1 canal was 16.12 feet NGVD, 0.37 feet above the top of the regulation schedule. The level in the canal in WCA- 2A was 11.28 feet NGVD, 0.28 feet above the top of the regulation schedule. Finally, the water level in the WCA-3A, measured by the average of 3 marsh gauges, was 10.04 feet NGVD, 0.58 feet above the top of the regulation schedule.

8. The current Climate Prediction Center's precipitation outlook for central and southern Florida is for equal chances of above, below, or normal rainfall for May and June. The July-September and August-October outlooks show higher chances of above normal rainfall; the typical outlook during the tropical storm season.

9. The June Lake Okeechobee stage forecast modeling suggests there is a 75% chance that the Lake stage will remain above the water shortage band over the wet season with the 50th percentile hydrologic condition estimating a November Lake stage above 13.5 ft NGVD.

10. Demands for supplemental irrigation water have dropped due to increased rainfall and the end of seasonal crop growing cycle. Local Diversion and Impoundment operations have shifted from water supply modes to seasonal drainage and flood control operations. Water supply demands are anticipated to remain seasonally low for the next several months.

ULTIMATE FACTS AND CONCLUSIONS OF LAW

11. 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.

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

13. Rule 40E-21.291(4), Fla. Admin. Code, authorizes the Governing Board to modify or rescind water shortage orders.

14. Rules 40E-21.271 and 40E-21.371, Fla. Admin. Code, recognize the restrictions contained in Part V of Chapter 40E-21, Fla. Admin. Code, are general water use restrictions. Rules 40E-21.271 and 40E-21.371, Fla. Admin. Code, also authorize 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.

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

16. 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.

17. Considering the above findings of fact, it is necessary to enter this Order rescinding the water shortage warning on the affected users.

ORDER

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

18. Water Shortage Order No. 2011-222-DAO-WS is hereby rescinded.

19. This Order rescinding Order No. 2011-222-DAO-WS shall become effective June 22, 2012.

20. A Notice of Rights is attached as Exhibit A.

DONE AND SO ORDERED in Okeechobee, Florida on this 14th day of June, 2012.



SOUTH FLORIDA WATER
MANAGEMENT DISTRICT
By its Governing Board

CAROLYN S. ANSAY
General Counsel

Attested:

District Clerk/Assistant Secretary
June 15, 2012

Legal Form Approved:

Jennifer Bokankowitz, Esq.

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.