

BEFORE THE GOVERNING BOARD OF THE
SOUTH FLORIDA WATER MANAGEMENT DISTRICT

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SFWMD No. 2012-092-DAO-WU

SOUTH FLORIDA
WATER MANAGEMENT DISTRICT

IN RE:

City of West Palm Beach, Florida
Authorizing Temporary Withdrawal
and Use of Water from the C-51
Canal

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ORDER

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 373.083, 373.085, 373.086, and 373.171, Florida Statutes ("Fla. Stat."), based on the following Findings of Fact and Ultimate Facts and Conclusions of Law.

FINDINGS OF FACT

1. The District is a public corporation of the State of Florida, existing pursuant to Chapter 25270, Laws of Florida, 1949, and operating pursuant to Chapter 373, Fla. Stat., and Title 40E, Florida Administrative Code ("Fla. Admin. Code"), as a multi-purpose water management district with its principal office at 3301 Gun Club Road, West Palm Beach, Florida. The District has the power and duty to protect Florida's water resources and to administer and enforce the provisions of Chapter 373, Fla. Stat., and the rules promulgated there under, Title 40E, Fla. Admin. Code. The District has jurisdiction over the matters addressed in this Order.

2. The City of West Palm Beach ("West Palm Beach") is authorized by the District to use 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.

3. West Palm Beach received Consumptive Use Permit #50-00615-W ("Permit"), from the District on October 12, 2006. West Palm Beach has a maximum allocation not to exceed 1,339 million gallons per month ("MGM") and 14,346 million gallons per year ("MGY") at its Clear Lake Water Treatment Plant.

4. In June and July 2011, West Palm Beach violated its Permit by withdrawing water from its wellfield without delivering an equal volume of reclaimed water from its Wetlands Reuse Site to the wellfield for recharge purposes. The District is attempting to work with West Palm Beach to prevent future permit violations and ensure West Palm Beach's water supply needs are met. The District directed West Palm Beach to evaluate various water sources to meet water supply needs. The District suggested various sources, including the C-51 Canal.

5. On March 23, 2012, West Palm Beach submitted an application to modify Permit No. 50-00615-W (Application No. 120323-4). The application included a request for an allocation from the C-51 Canal. The District is currently evaluating the application for compliance with District consumptive use permitting rules and criteria.

6. On July 12, 2012, West Palm Beach requested a one year extension of the authorization to divert and use water from the C-51 Canal.

7. The C-51 Canal is part of the Central and Southern Florida ("C&SF") Project for which the District is the designated local sponsor pursuant to Section 373.1501, Fla. Stat. As local sponsor, the District operates C&SF Project components, including the C-51 Canal and the surface water flow to tide from the C-51 Basin.

8. On July 14, 2011, the District issued Order No. 2011-100-DAO-WS. The order authorized West Palm Beach to divert water from the C-51 Canal to its Renaissance Project when the District's S-155 structure was discharging to tide. The order enabled West Palm Beach to meet its water supply needs during the 2011 dry season when inflows to its water supply lakes from the L-8 Canal and M-Canal Water Use Basin were insufficient.

9. West Palm Beach requests extension of the temporary authorization to divert and use water from the C-51 Canal to help meet its water supply needs. West Palm Beach seeks to divert water that would otherwise be discharged to tide via the District's S-155 Structure. West Palm Beach could intercept C-51 Canal water and convey the water through the Stub Canal and into West Palm Beach's Renaissance Project by opening the Boyd Street Structure to intercept water that would otherwise be discharged to tide. A map depicting these features is attached hereto as Exhibit A.

10. The intercepted water will be treated in West Palm Beach's existing permitted Renaissance Project. The Renaissance Pump Station will then discharge the treated water into the south end of Clear Lake.

11. The District did not receive any complaints regarding West Palm Beach's temporary use of the C-51 Canal from existing legal users of the C-51 Canal or surrounding offsite land uses during the term of Order No. 2011-100-DAO-WS.

ULTIMATE FACTS AND CONCLUSIONS OF LAW

12. The C-51 Canal is part of the C&SF Project for which the District is the designated local sponsor pursuant to Section 373.1501, Fla. Stat. Pursuant to Sections

373.085 and 373.086, Fla. Stat., the District is authorized to operate the works of the District, including the S-155 structure and regulate water in the C-51 Canal.

13. It is unlawful to connect to or make use of the works or land of the District without consent in writing from its Governing Board. The Board has authority to prevent or, if done, estop or terminate the same. §§ 373.085(1)(b) and 373.0861(1), Fla. Stat (2012). The Governing Board shall have full control over the works and right of way of the District. Id.

14. The Governing Board may “[i]ssue orders to implement or enforce any provisions of th[e] chapter or regulations.” § 373.083(2), Fla. Stat. (2012).

15. The Governing Board is authorized to issue orders affecting the use of water, as conditions warrant, and forbidding the construction of new diversion facilities or wells, the initiation of new water uses, or the modification of any existing uses, diversion facilities, or storage facilities within the affected area. § 373.171(1), Fla. Stat. (2012).

16. Acting under these authorities, the District has the authority to allow for the interception and storage of water that is otherwise discharged to tide consistent with achieving the other District missions, including natural systems protection and restoration, such as Everglades restoration, protection of existing legal uses, flood protection, water quality, and water supply.

ORDER

Based upon the Finding of Fact, Ultimate Facts and Conclusions of Law pursuant to the above cited laws, the Governing Board orders that:

17. Water about to be discharged to tide from the C-51 Canal may be intercepted and stored within the West Palm Beach lake system as set forth below and Exhibit B:

a. Normal Open Criteria: This Order authorizes the use of the West Palm Beach Boyd Street Structure to intercept C-51 Canal water before it is discharged to tide through the coastal S-155 Structure when either: 1) water is being discharged to tide through the S-155 Structure; or, 2) the stage at the Pine Lake Gauge (WTPL) is at or above 8.20 feet NGVD. It is the responsibility of West Palm Beach to identify when these conditions are met by reviewing the SFWMD's Current Reading Web Page.

b. Special Open Criteria: On a case-by-case basis, the District may approve withdrawals by the City if the headwater stage of the S-155 Structure is above 8.0 feet NGVD and rising, while considering factors, including, but not limited to, whether the connected C-15 and/or C-16 Canals are discharging.

c. Normal Close Criteria: West Palm Beach shall review the SFWMD's Current Reading page or, in its absence, contact the Control Room and determine whether the close criteria has occurred at least once a day and early enough to allow time for the interception operation to be terminated by no later than 6:00 p.m. The authorization to intercept water will end when the stage at the WTPL location is below 8.10 feet NGVD.

d. Special Close Criteria: The City of West Palm Beach will terminate the interception of water as soon as safely possible when directed by the SFWMD's Operations Control Center ("OCC").

18. This water shall be diverted via a gravity connection to the C-51 Canal at the Boyd Structure. The City is not authorized to install any infrastructure pursuant to this Emergency Order.

19. Prior to the interception of water, the City must contact the District's Operational Control Room at (561) 681-2570 to confirm water availability and receive written confirmation of the same from the District.

20. West Palm Beach shall report the amount of water diverted from the C-51 Canal to the Renaissance Project. Monthly withdrawals for each withdrawal facility shall be reported to the District on a monthly basis. The report shall be submitted by the 5th day of each month for all withdrawals occurring during the preceding calendar month. The pumpage report shall reference West Palm Beach's consumptive use permit number and this Order.

21. All documents and reports required by this Order shall be submitted to Alicia Carimbocas via email at alcarimb@sfwmd.gov or facsimile at (561) 682-5813.

22. West Palm Beach shall comply with the conditions of Permit Nos. 50-00615-W and 50-07890-W. The limiting conditions and withdrawal limitations set forth in West Palm Beach's Permits are not modified or otherwise affected by this Order.

23. This Order authorizes West Palm Beach to take actions under Chapter 373, Fla. Stat., as provided herein. This Order does not relieve West Palm Beach from the requirements to obtain any other federal, state, or local authorizations.

24. This Order does not constitute a water use or right-of-way permit or grant any legal right to water as set forth in Chapter 373 Fla. Stat., and associated District rules and regulations over the water intercepted and stored under this Order.

25. This Order shall not be construed as a substitute for, or waiver of, any right-of-way, surface water management, water use, or other permits required of West Palm Beach under the District's rules and regulations. If West Palm Beach pursues, and is granted, an allocation of water from the C-51 Canal, West Palm Beach must obtain a right-of-way permit from the District.

26. West Palm Beach shall insure that harmful impacts to the water resources, off-site land uses, or existing legal uses of water do not occur as a result of this Order. In the event such harmful impacts result from actions authorized by this Order, West Palm Beach shall implement all actions, as directed by the District, to cease such harmful impacts and, if necessary, to mitigate such impacts. Failure to comply with this requirement shall be considered a violation of this Order.

27. West Palm Beach shall hold and save the District harmless from any and all damages, claims, or liabilities which may arise by reason of the construction, operation, maintenance or use of any facility authorized by this Order.

28. Failure to comply with the terms of this Order shall constitute a violation of a District Order under Chapter 373, Fla. Stat., and enforcement proceedings may be brought in any appropriate administrative or judicial forum.

29. The District reserves the right to initiate appropriate legal action, to impose civil penalties, and collect attorney's fees and costs to enforce the terms of this Order.

30. This Order may be modified or amended at any time, as appropriate for the protection of the public health, safety, and welfare and the water resources of south Florida by the Governing Board, Executive Director, or Executive Director's designee. The Executive Director or Executive Director's designee may require West Palm Beach

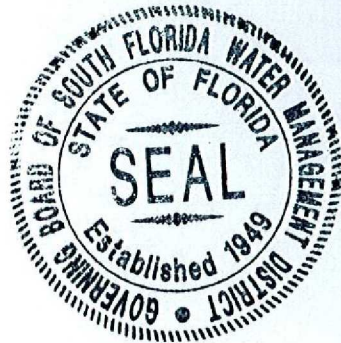
to cease interception and storage activities under this Order at any time.

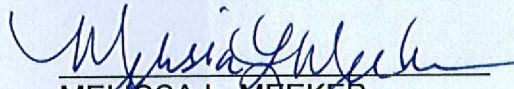
31. This Order shall terminate on June 1, 2013, upon the District's granting of a modification to Permit No. 50-00615-W or other appropriate authorization, or upon written notice from the District's Executive Director or the Executive Director's designee, whichever occurs first.

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

DONE AND SO ORDERED in West Palm Beach, Florida on this 9th day of August, 2012.

SOUTH FLORIDA WATER
MANAGEMENT DISTRICT
By its Governing Board



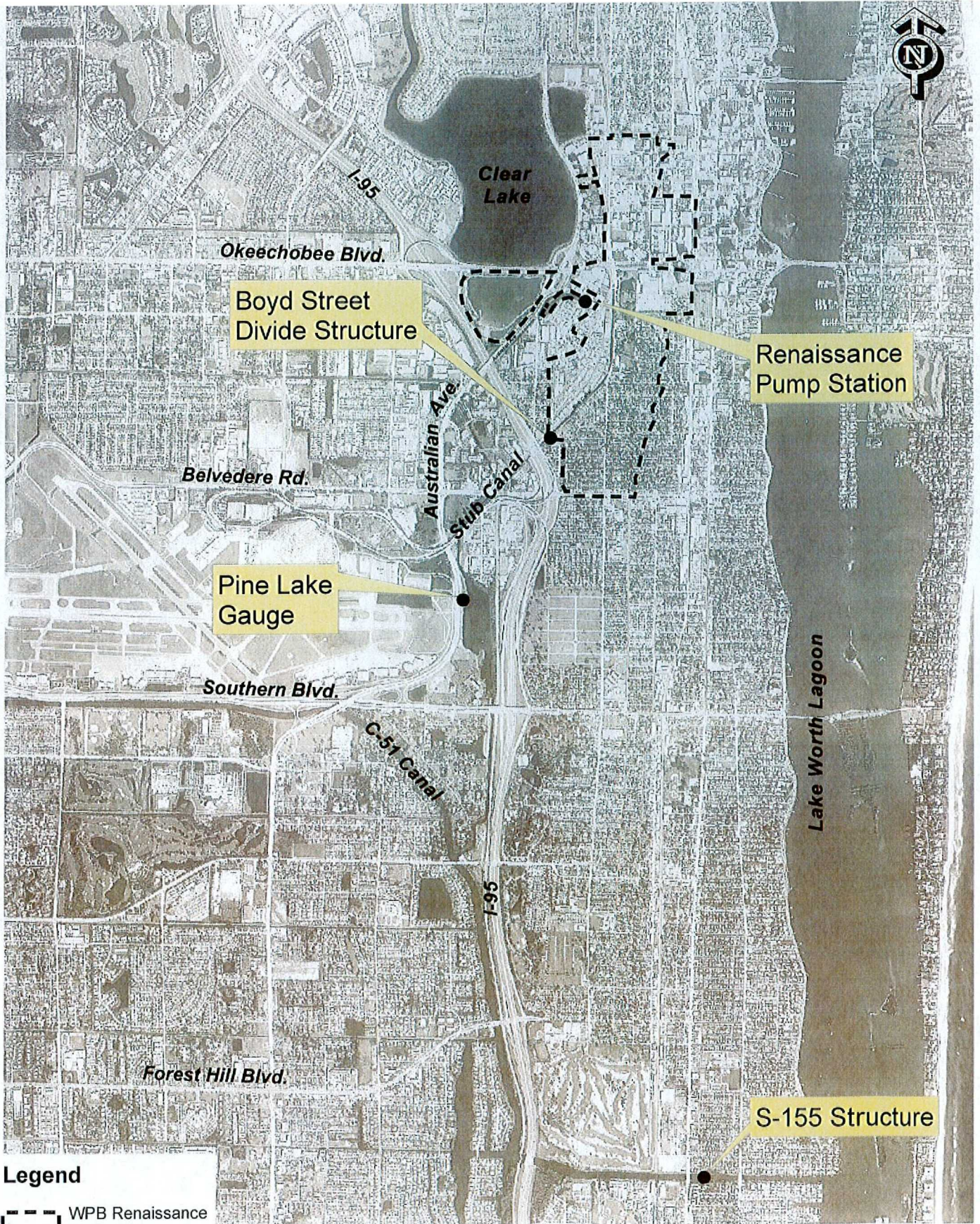

MELISSA L. MEEKER
Executive Director

Attested:



District Clerk/Assistant Secretary
August 14, 2012

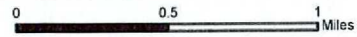
Legal Form Approved:


Jennifer Bokankowitz, Esq.



Legend

 WPB Renaissance Project Site



Aerial Photo: Palm Beach County, 2011

Prepared by:



August 2012

C-51 Diversion Project
 City of West Palm Beach

Annotated Interception Criteria for West Palm Beach's Boyd Street Structure

Required Conditions to Initially Open ^{*}:

1. S-155 Discharging to Tide (one, two, or three gates open); or ,
2. SFWMD's Real Time WTPL Stage \geq 8.20 feet NGVD and the stage on the south side of Boyd Street Structure \geq stage on the north side; or;
3. As directed anytime 24/7 by SFWMD's Operations Control Center ("OCC").

Required Conditions to Remain Open ^{*}:

1. S-155 is discharging to tide (one, two, or three gates open); or
2. SFWMD's real time WTPL Stage \geq 8.10feet NGVD; or
3. As directed anytime 24/7 by SFWMD's Operations Control Center ("OCC").

Required Conditions for Immediate Closure:

1. SFWMD's real time WTPL Stage $<$ 8.10 feet NGVD and all gates at S-155 are closed; or,
2. As directed anytime 24/7 by SFWMD's Operations Control Center ("OCC").

Conditions Related to Openings and Closures:

- All terms and conditions of SFWMD's Order to the West Palm Beach to intercept and store excess water from the C-51 Canal.
- West Palm Beach must provide one primary and one backup 24/7 emergency phone contact numbers.
- When reading WTPL Stage on SFWMD's Website(s), West Palm Beach must always confirm the reading is current (e.g., the date and time stamp for the Stage must not be more than one hour old).
- If WTPL's stage date and time stamp is more than one hour old, West Palm Beach must immediately call SFWMD's OCC (561-682-6116) for the latest reading.

Notes and Additional information:

- 24/7 means available twenty-four hours per day seven days per week;
- WTPL gauge is located on east side of Australian Avenue south of Belvedere Road;
- WTPL stage to be established on SFWMD's West Palm Beach region of SFWMD's Web Page;
- Web address (URL) to access SFWMD's WTPL real time readings:
http://www.sfwmd.gov/portal/pls/portal/realtime.realtime_app.rtv2?p_op=WEST_PALM_BEACH

*Except during the conditions when Boyd Street Structure is authorized via SFWMD Permit to discharge storm water south to Palm Beach County's Stub Canal. The City of West Palm Beach remains authorized to discharge water through the Boyd Street if the criteria of that Permit are met.

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.