



## SOUTH FLORIDA WATER MANAGEMENT DISTRICT

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# STATEMENT

August 9, 2007

by **ERIC BUERMANN, GOVERNING BOARD CHAIRMAN**  
**SOUTH FLORIDA WATER MANAGEMENT DISTRICT**

### **Re: NPDES Permitting Appeal**

"Recent actions by this Governing Board demonstrate the commitment of the South Florida Water Management District to identify water supply alternatives that meet both the economic needs of the agricultural community, support business interests and protect the environment.

"While we contemplate alternatives that would ultimately eliminate the need for back-pumping during times of water shortage, the District is and will continue to follow the spirit and letter of the law. Florida's robust permitting system is ensuring that our complex water management operations comply with State law and adhere to the standards of the federal Clean Water Act.

"Although the State of Florida has rigorous regulations in place to protect water quality, a federal court has directed the District to obtain a federal permit to move water for the purposes of water supply and flood control. As you all know, earlier today this Governing Board voted not to use traditional back-pumping for water supply purposes, even during dire drought circumstances. And, the District is complying with the Court's direction and is applying for a federal permit. But, the District is also continuing its defense of this critical issue by appealing the order.

"We appreciate the support of the Florida Department of Environmental Protection and various federal environmental agencies in assessing the need to appeal this case. I want to be clear. This appeal is not about a desire to back-pump. Rather, it is about a state's right to manage its resources on behalf of its citizens. This is a watershed case of national significance. Surrendering jurisdiction over transfers of state waters to the federal permitting process serves neither our people nor our natural resources.

"This federal permitting process is duplicative, onerous and an unsuitable mechanism for regulating water transfer, and it diverts State resources away from genuine pollutant control efforts. Requiring federal permits for Florida's management and protection of its waters blurs the line of federal jurisdiction over state government, and sends a troubling message to every water management agency in the country.

"The South Florida Water Management District remains committed to the people of South Florida, and we will continue to manage our waters in the public's interest. Our goals to protect our natural resources, strengthen our economy and safeguard the health, welfare and safety of Florida's communities are unwavering."

Copy of the [Notice of Appeal](#)

Copy of the [Permit Application](#) and [Cover Letter](#)

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## **QUESTION AND ANSWERS**

### **What action is the South Florida Water Management District taking?**

On June 15, 2007, U.S. District Court Judge Cecilia Altonaga ruled that a federal National Pollutant Discharge Elimination System (NPDES) permit is required by the South Florida Water Management District to continue operating pumping stations S-2, S-3 and S-4 located in Palm Beach County for regional flood control and water supply purposes.

In compliance with that order, the District is applying to the Florida Department of Environmental Protection for an NPDES permit. The District is also filing a Notice of Appeal to the Judge's order.

### **Why is the District appealing the Court's decision?**

The intention of the appeal is to address the issue of governance and jurisdiction. The appeal is not an attempt to circumvent regulations, avoid permits, lessen protection for the environment or reinforce back-pumping activities. The District maintains that it is not appropriate for federal permit requirements to trump a state's ability and right to manage the water resources of the state.

### **Are the S-2, S-3 and S-4 structures already regulated?**

Yes. The S-2, S-3 and S-4 structures are operated under a State permit in full compliance with State law. Florida's Lake Okeechobee Protection Act, passed in 2000, required the South Florida Water Management District to obtain a State permit for operating the structures that move water around the lake.

### **Does the State permit protect water quality?**

Yes. The five-year State permit under which the structures are regulated establishes specific, science-based pollutant targets and a suite of measures necessary to help achieve a protective water quality limit of phosphorus. It also includes comprehensive monitoring and restricts the transfer of water into Lake Okeechobee from the Everglades Agriculture Area at the S-2 and S-3 structures, requiring the District to coordinate and report back-pumping activities to the Department of Environmental

Protection. The District is in full compliance with the permit. A NPDES permit offers Lake Okeechobee no additional protective measures.

### **Why is the District then also applying for a NPDES permit?**

The District is complying with the Court's direction to apply for a federal permit.

### **What are NPDES permits for?**

Authorized by federal law in the Clean Water Act, NPDES permits are used to regulate the discharge of pollutants into U.S. waters and are most commonly required for industrial or municipal purposes, such as factories.

NPDES permits are not designed to control the movement of water strictly for water management purposes, such as flood control and water supply. The permit application does not include a category for movement of surface water by water management agencies.

The U.S. Environmental Protection Agency had previously advised the District that no NPDES permits were required for the S-2, S-3 and S-4 structures. The District's position on this issue is supported by the United States of America, represented by the U.S. Department of Justice, as well as the State of Florida and water resource entities from other states.

### **What does this have to do with the current water shortage?**

This appeal and the permit application are jurisdictional issues between the state and federal government. They are not related to the current water shortage.

On August 8th, the South Florida Water Management District's Governing Board held a public workshop on Lake Okeechobee water supply issues and alternatives. The workshop brought together experts to explore technically-feasible ways to augment water supply to Lake Okeechobee and to openly address concerns about back-pumping. As a result of the workshop, the Board voted against back-pumping to augment water supply during this current water shortage.

### **What is the District doing to protect and restore Lake Okeechobee?**

Since 2001, the State has invested more than \$140 million to improve farming practices, construct wetlands and implement phosphorus reduction technologies to improve the health of Lake Okeechobee. Conservation and nutrient management activities collectively cover 400,000 acres of farmland in the watershed where best farming practices and farm treatment projects are improving water quality.

In 2005, the State also initiated the Lake Okeechobee and Estuary Recovery Plan, dedicating \$200 million to expand water storage areas, construct treatment marshes and expedite environmental management initiatives.

This year, the Florida Legislature unanimously passed legislation to expand the Lake Okeechobee Protection Act to safeguard and restore the entire northern Everglades

system, including the Lake Okeechobee watershed as well as the Caloosahatchee and St. Lucie rivers and estuaries. Over the next two years, the law calls for the development of far-reaching plans to protect and improve the quality, quantity, timing and distribution of water in the northern Everglades ecosystem. This year alone, the District will dedicate \$199 million to benefit the northern Everglades and the lake.

Together with the Comprehensive Everglades Restoration Plan, these efforts are fast-tracking construction projects to provide additional water storage, reduce harmful discharges to coastal estuaries and reduce the flow of phosphorus into the lake. The District is also pursuing alternatives for additional storage, including actively pursuing water storage sites on public and private lands in the Okeechobee basin. Most recently, the District completed an \$11 million effort to improve water quality and restore habitat by removing and disposing of 1.9 million cubic yards of phosphorus-rich muck from the lake.

### **What happens next?**

The Florida Department of Environmental Protection (DEP) will process the NPDES permit application. Since no category exists in the application for regulating the movement of surface water by a water management agency, the DEP may need to consult with the U.S. Environmental Protection Agency, which provides oversight of the NPDES program.

In the appeal process, legal briefs will be prepared for the court over the next several months. Oral arguments will then be heard by a three-judge panel, and a decision on the appeal will be made. The likely timeframe for a decision is late 2008.

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### **About the South Florida Water Management District**

*The South Florida Water Management District is a regional, governmental agency that oversees the water resources in the southern half of the state – 16 counties from Orlando to the Keys. It is the oldest and largest of the state's five water management districts. The agency mission is to manage and protect water resources of the region by balancing and improving water quality, flood control, natural systems and water supply. A key initiative is cleanup and restoration of the Everglades.*