

**SOUTH FLORIDA WATER MANAGEMENT DISTRICT**

3301 Gun Club Road  
West Palm Beach, Florida 33406

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**IN THE MATTER OF:**

Water Shortage Variance Application  
No. 4335 filed by Collier County Water  
Sewer District

SOUTH FLORIDA  
WATER MANAGEMENT DISTRICT  
SFWMD 2008-036-DAO-WS



**ORDER GRANTING VARIANCE**

This matter came to be heard before the Governing Board of the South Florida Water Management District ("District") on the 8th day of January, 2008. After being otherwise fully apprised of the matter, the Governing Board issues this Order, containing the following Findings of Fact and Ultimate Facts and Conclusions of Law.

**FINDINGS OF FACT**

1. On December 4, 2007, the District received an Application for Variance ("Application") filed by Collier County Water Sewer District ("Applicant"). A copy of the Application for Variance is attached and incorporated as Exhibit "A".
2. On December 13, 2007, the District issued Water Shortage Order No. 2007-870-DAO-WS, imposing Modified Phase III Restrictions, with an effective date of January 15, 2008.
3. In a letter, dated January 12, 2008, District staff advised the Applicant that the Application for Variance was approved by the Governing Board. A copy of the letter is attached and incorporated as Exhibit "B".
4. The Applicant did not appear at the January 8, 2008, Governing Board Meeting.
5. Pursuant to subsection 373.083(5), Florida Statutes ("F.S."), 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.

**ULTIMATE FACTS AND CONCLUSIONS OF LAW**

6. Rule 40E-21.275, F.A.C., governs the criteria for issuance of variances. Pursuant to Rule 40E-21.275(2), F.A.C., no application for variance shall be granted unless the applicant provides reasonable assurances that the variance will not otherwise be harmful to the water resources of the District and affirmatively demonstrates that one or more of the following circumstances exists:

- a. the variance is essential to protect health or safety, or
- 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, or
- c. alternative restrictions which achieve the same level of demand reduction as the restrictions from which the variance is sought are available and are binding and enforceable, or
- 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.

7. The District has determined that the Applicant has complied with the requirements of law and has provided sufficient information to enable the District to evaluate the merits of the request for a variance.

8. The Applicant has provided reasonable assurances that the variance will not otherwise be harmful to the water resources of the District and has met the criteria for issuance of a variance.

9. A Notice of Rights is attached hereto as Exhibit "C".

**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 orders that Variance Application Number 4335 is hereby **granted**.

**DONE AND SO ORDERED** this 8th day of January, 2008, at a public meeting held at the Grand Bay Miami Hotel, 2669 South Bayshore Drive, Miami, Florida 33133.

SOUTH FLORIDA WATER  
MANAGEMENT DISTRICT  
BY ITS GOVERNING BOARD

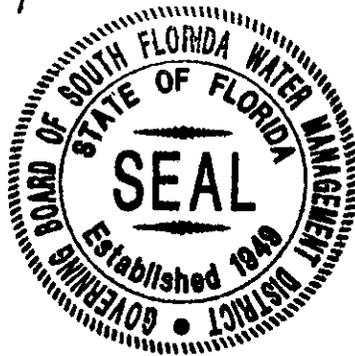
ATTEST:

BY: *Jackie McGinty*  
Assistant Secretary

DATE: 2/4/08

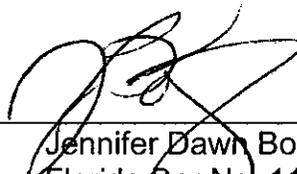
BY: *Sheryl G. Wood*  
Sheryl G. Wood  
General Counsel

Legal Form Approved  
BY: *[Signature]*



**CERTIFICATE OF SERVICE**

I **HEREBY CERTIFY** that a true and correct copy of the foregoing has been furnished via Regular U.S. Mail to: Elizabeth Johnssen, Collier County Water Sewer District, 3301 E. Tamiami Trail, Bldg. H, 3<sup>rd</sup> Floor, Naples, FL 34112, this 4<sup>th</sup> day of February, 2008.



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Jennifer Dawn Bokankowitz  
Florida Bar No. 11764  
South Florida Water  
Management District  
3301 Gun Club Road, MSC 1410  
West Palm Beach, FL 33406  
Telephone: 561-682-2258  
Facsimile: 561-682-6276

SOUTH FLORIDA WATER MANAGEMENT DISTRICT

APPLICATION FOR VARIANCE

Pursuant to Rule 40E-21.275, Florida Administrative Code

Additional information believed to be material may be attached and additional sheets may be used if necessary, for any of the responses.

A. Name: COLLIER COUNTY WATER SEWER DISTRICT

Address: 3301 E. TAMiami TRAIL BLDG H 3RD FLOOR NAPLES FL 34112  
Street City State Zip

Email Address: BENJOHNSEN@COLLIERGOV.NET

24 hour contact phone #: (239) 625-0403

Location of Property for which relief is being requested if different from above:

PELICAN BAY (LIVINGSTON RD), MULE PEN QUARRY (IMMOBILEE RD) WELFIELDS  
Street City State Zip

Section/Township/Range (if known): \_\_\_\_\_

SFWMD Permit Number: 11-00052-W Project Name: SUPPLEMENTAL WELL SYSTEM TO RECLAIMED WATER SUPPLY

B. Specific rule, order, water shortage phase or restriction from which relief is requested: PHASE II, PHASE III

C. Facts supporting this request (be as specific as possible -- include reports by qualified technical experts):

THE PELICAN BAY WELDFIELD PROVIDES BACK-UP FIRE SUPPRESSION FOR THE PELICAN BAY COMMUNITY. BOTH WELDFIELDS PROVIDE SUPPORT & RELIABILITY IN THE CASE OF PLANT UPSET WHEN NO COMPLIANT WATER IS PRODUCED.

D. Description of relief requested:

THIS REQUEST IS TO HAVE THE ABILITY TO OPERATE THE WELDFIELDS DURING PHASE II & PHASE III RESTRICTIONS FOR THE FOLLOWING REASONS: FIRE SUPPRESSION PURPOSES, RELIABILITY IN THE EVENT OF PLANT UPSET, AQUIFER CONDITIONING FOR ASR WELL PROGRAM, THE

E. Period of time for which variance is sought and the reasons and facts for such: PHASE II, PHASE III RESTRICTIONS ABILITY TO MEET PEAK DEMAND.

F. Damage or harm which may result from compliance with the Water Shortage Rule or Order:

LACK OF RELIABLE FIRE SUPPRESSION OR IN THE EVENT OF DISRUPTION OF RECLAIMED WATER PRODUCTION IN THE PLANTS, THE INABILITY TO SUPPLY ANY WATER TO CUSTOMERS FOR IRRIGATION PURPOSES.

G. If restrictions cannot be met because of extent or cost, describe measures necessary to meet all restrictions, restrictions which can be met, and the date of compliance:

.....  
.....  
.....

H. If this request is for a golf course which is unable to meet the front nine-back nine requirements, submit a map showing the proposed alternative division of the course in half and an explanation of the proposed irrigation scheme.

.....  
.....

I. For applications for variance from restrictions on irrigation, provide a general description of the irrigation system, including pump or water system output and irrigated area:

.....  
.....

J. Any other information the applicant believes is material:

*IF WELLFIELD OPERATION IS REQUIRED PUMPAGE WOULD BE IN ACCORDANCE WITH THE REDUCTION RESTRICTIONS IN PLACE. WE ARE REQUESTING THE ABILITY TO OPERATE THESE WELLFIELDS ON A LIMITED BASIS WITHOUT REDUCTION/RESTRICTION TO OUR RECLAIMED WATER CUSTOMERS.*

*[Signature]*  
Applicant's Signature  
*LIZABETH JOHNSSEN*  
Print name of Applicant  
*12/4/07*  
Date

.....For District Use Only.....

Date Received: \_\_\_\_\_ Date Application Complete: \_\_\_\_\_ Control No: \_\_\_\_\_

Compliance: Yes \_\_\_\_\_ No \_\_\_\_\_

Approved: *[Signature]*  
By: \_\_\_\_\_  
Date: *Jan 04 2008*

Form Sent \_\_\_\_\_ Received \_\_\_\_\_



**SOUTH FLORIDA WATER MANAGEMENT DISTRICT**

3301 Cam Club Road, West Palm Beach, Florida 33406 • (561) 656-8300 • TOLL FREE 1-800-432-2015 • TDD (561) 697-2321  
Mailing Address: P.O. Box 21680, West Palm Beach, FL 33416-4680 • www.sfwmd.gov

RES 16 - 08

January 12, 2008

**Governing Board Approval**

Collier County Water Sewer District  
COLLIER COUNTY WATER SEWER DEPARTMENT  
ATTN: LIZABETH JOHNSSEN  
3301 E. TAMiami TRAIL  
BLDG. H, THIRD FLOOR  
NAPLES, FL 34112

Dear COLLIER COUNTY WATER SEWER DEPARTMENT:

**Subject: Water Shortage Variance No. 4335**

On January 8, 2008, the Governing Board of the South Florida Water Management District approved your application for a water shortage variance. The enclosed variance certificate replaces the temporary variance we previously sent. Please be sure to prominently display this certificate at your place of water use. Additionally, please review the certificate as the wording of the variance may be different than the wording of your temporary variance.

The exceptions authorized in this variance are limited to the duration of the water shortage declaration existing on the date of this letter. If the variance was granted because compliance with this particular rule or order will require measures that cannot be accomplished within the anticipated duration of the shortage, because of their cost or extent, you are advised that appropriate changes must be made to the system to allow compliance with future water shortage restrictions.

If you have any questions regarding this matter, please feel free to contact Cynthia Gefvert, P.G. at (561) 682-2610.

Sincerely,

Chip Meyriam  
Deputy Executive Director, Water Resources

Enclosure

*GOVERNING BOARD*

Kevin McCarty, *Chair*  
Dela M. Bagné, *Vice Chair*  
Miyu Burl Stewart

Alice J. Carlson  
Michael Collins  
Nicolás J. Gutiérrez, Jr., *Esq.*

Lennart E. Lindahl, *P.E.*  
Harkley R. Thornton  
Malcolm S. Wade, Jr.

*EXECUTIVE OFFICE*

Carol Ann Wehle, *Executive Director*



# South Florida Water Management District Variance to Water Storage Restrictions

Variance Control No.: 4335

Project Name: COLLIER COUNTY WATER SEWER DISTRICT

Issued To: COLLIER COUNTY WATER SEWER DEPARTMENT

3901 E. TAMiami TRAIL  
BLDG. H, THIRD FLOOR  
NAPLES, FL 34112

Expiration Date: END OF PHASE III WATER SHORTAGE

Specific Authorization(s) THE PURPOSE OF THIS VARIANCE IS TO ALLOW COLLIER COUNTY TO UTILIZE ALL OF THEIR RECLAIMED WATER. THE COLLIER COUNTY RECLAIMED WATER SYSTEM WILL BE MINIMALLY SUPPLEMENTED BY GROUNDWATER OR SURFACE WATER.

RESIDENTIAL RECLAIMED WATER USERS WILL BE ASKED TO LIMIT IRRIGATION TO NO MORE THAN THREE TIMES A WEEK AS PER THE FOLLOWING SCHEDULE. ODD NUMBERED ADDRESSES WILL BE ALLOWED TO WATER BETWEEN 12:01 AM AND 8:00 AM ON MONDAY, WEDNESDAY, AND/OR SATURDAY. EVEN NUMBERED ADDRESSES WILL BE ALLOWED TO WATER BETWEEN 12:01 AM AND 8:00 AM ON TUESDAY, THURSDAY, AND/OR SUNDAY.  
LOW VOLUME IRRIGATION, I.E. DRIP IRRIGATION AND MICROJET IRRIGATION, SHALL BE VOLUNTARILY REDUCED. HAND-WATERING OF EXISTING LANDSCAPING, USING A HOSE WITH A SELF-CANCELING NOZZLE, IS ALLOWED ANYTIME FOR NO MORE THAN 10 MINUTES PER AREA FOR STRESS RELIEF OR TO PREVENT PLANT DIE-OFF.

Approved by:

Deputy Executive Director  
Water Resources

NEW LANDSCAPING IN PLACE FOR LESS THAN 60 DAYS MAY BE WATERED MONDAY THROUGH FRIDAY FROM 12:01 AM TO 8:00 AM. LOW VOLUME IRRIGATION, I.E. DRIP IRRIGATION AND MICROJET IRRIGATION, AND HAND-WATERING SHALL BE VOLUNTARILY REDUCED.

IF THE RECLAIMED WATER FACILITY HAS OPERATIONAL ISSUES AND CANNOT PROVIDE SUFFICIENT WATER (70% OF THE CONTRACTED VOLUME) FOR THE IRRIGATION OR FOR FIRE SUPPRESSION SYSTEMS, THEY MAY SUPPLEMENT THE RECLAIMED WATER WITH GROUNDWATER. IF SUPPLEMENTAL WATER USE EXCEEDS 4.0 MILLION GALLONS PER MONTH OR IF UNEXPECTED ISSUES ARISE, UTILITY MANAGEMENT MUST CONTACT THE SPWMD TO DISCUSS REVISIONS AND OPTIONS TO REDUCE DEMAND.

THE COLLIER COUNTY WATER SEWER DISTRICT WILL COMMUNICATE WITH THE RECLAIMED WATER USERS THE NEED TO CONSERVE, HOW TO IRRIGATE MOST EFFECTIVELY, AND XERISCAPE INFORMATION.

IF THE WATER SHORTAGE ADVANCES TO A MORE RESTRICTIVE LEVEL THE APPLICANT MUST REAPPLY FOR VARIANCE.

## 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's Governing Board 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.