

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

RECEIVED  
DISTRICT CLERK'S OFFICE  
SEP 16 2008 1:22 PM

Order No. 2008-409-DAO-WS

SOUTH FLORIDA  
WATER MANAGEMENT DISTRICT  
8

**IN THE MATTER OF:**

Rescission of Order No. 2007-684-DAO-WS and Imposition of Modified Phase II Landscape Irrigation Restrictions for Users Within the Kissimmee River Valley Water Use Basin, the Entire Indian Prairie Water Use Basin, that Portion of the Lakeshore Perimeter Water Use Basin that Lies South of the L-59, L-60, and L-61 Canals and Between the Kissimmee River and the L-50 Canal, and that Portion of the Istokpoga Canal that Lies Between the Lake and G-85.

**ORDER RESCINDING RESTRICTIONS AND IMPOSING MODIFIED  
PHASE II LANDSCAPE IRRIGATION RESTRICTIONS**

The Governing Board of the South Florida Water Management District (hereinafter "District"), after considering recommendations of District staff and being otherwise fully apprised of the matter, issues this Order pursuant to Section 373.246, Florida Statutes ("F.S."), and Chapter 40E-21, Florida Administrative Code ("F.A.C."), based on the following Findings of Fact and Ultimate Facts and Conclusions of Law.

**FINDINGS OF FACT**

1. On October 8, 2007, the District's Executive Director issued Water Shortage Order No. 2007-684-DAO-WS imposing modified Phase III restrictions and other appropriate measures on all use classes utilizing surface water withdrawn from Central and Southern Florida Flood Control Project Canals known as C-39A, C-40A, C-41, C-41A, L-59, L-60, and L-61 ("Project Canals"), surface waters that discharge into or

flow from the identified Project Canals via drainage or water supply canals and/or ditches, Lake Istokpoga surface water, and surface water from the Istokpoga Canal upstream and west of G-85. The Governing Board issued Order No. 2007-685-DAO-WS, concurring with the Executive Director's order on October 11, 2007.

2. District staff has continued to monitor the conditions of the water resources and the needs to the water users as required pursuant to Rule 40E-21.221, F.A.C.

3. Since the effective date of Order No. 2007-684-DAO-WS, the water resource concerns have significantly improved over the District due to favorable rains in the first half of the wet season, Tropical Storm Fay which produced a six-day average of 7.63 inches District-wide during the second half of August, and a reduction in overall demand through the imposition of water shortage restrictions.

4. Water levels in Lake Okeechobee have risen to an elevation of 15.10 feet NGVD as of September 9, 2008.

5. The areas which are the subject of this Order are the Kissimmee River Valley Water Use Basin, the Entire Indian Prairie Water Use Basin, that portion of the Lakeshore Perimeter Water Use Basin that lies south of the L-59, L-60, and L-61 Canals and between the Kissimmee River and the L-50 Canal, and that portion of the Istokpoga Canal that lies between the Lake and G-85, the areas previously subject to Water Shortage Order No. 2007-684-DAO-WS. A map of the areas affected by this Order is attached hereto as Exhibit "A."

6. All use classes as identified in Rule 40E-21.651, F.A.C., and located within the basins described in Paragraph 5, above, are subject to this Order.

## ULTIMATE FACTS AND CONCLUSIONS OF LAW

7. Section 373.246, F.S., 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. Chapter 40E-21, F.A.C., is the water shortage plan adopted by the Governing Board.

8. The District's Water Shortage Plan is set forth in Chapter 40E-21, F.A.C.

9. Rule 40E-21.291(4), F.A.C., authorizes the Governing Board to modify or rescind water shortage orders.

10. Rule 40E-21.271, F.A.C., recognizes the restrictions contained in Part V of Chapter 40E-21, F.A.C., 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, F.A.C.

11. Rule 40E-21.401, F.A.C., and permit conditions, authorize the District to obtain data concerning monitoring of water usage.

12. The District has monitored the condition of the water resources and the needs of the users as required by Rule 40E-21.221, F.A.C.

13. Although water resource conditions of the region are generally improving, continued restriction of landscape irrigation will reduce the demand on the regional system to ensure recovery from drought conditions.

14. Considering the above findings of fact, it is necessary to enter this Order imposing specific restrictions on the affected users.

## ORDER

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

15. Water Shortage Order No. 2007-684-DAO-WS is hereby rescinded.
16. Landscape irrigation use located within Highlands County shall be subject to the landscape irrigation restrictions set forth in Order SWF 07-02, adopted by the Southwest Florida Water Management District on July 31, 2007, all orders extending Order SWF 07-02, and any subsequent modifications, revisions, and/or increased restrictions issued by the Southwest Florida Water Management District until this Order is rescinded. A copy of Order SWF 07-02 and all extensions of Order SWF 07-02 to date are attached hereto as Composite Exhibit "B."
17. Landscape irrigation use within the basins described in Paragraph 5 above, except for those basin(s) located in all or part of Highlands County, shall be subject to the same landscape irrigation restrictions set forth in Water Shortage Order No. 2008-166-DAO-WS, which are set forth in Exhibit "C."
18. Permitted water users are required to continue submitting water usage monitoring data in accordance with permit conditions. The Director of the Water Use Regulation Division 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.
19. Variances granted from or extended by Water Shortage Order Number 2007-684-DAO-WS shall expire upon the effective date of this Order.

20. The Governing Board requests that every city and county commission, state and county attorney, sheriff, police officer and other appropriate local government official within the District assist in the implementation and enforcement of this Water Shortage Order. The District staff will cooperate with the local governments in implementing such enforcement measures.

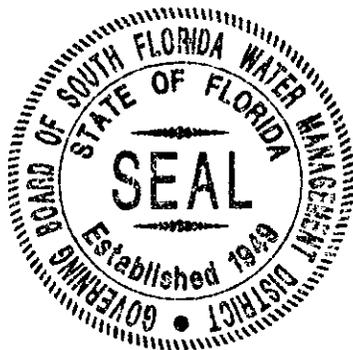
21. This Order rescinding Modified Phase III Extreme Water Shortage Restrictions and Imposing Modified Phase II Landscape Irrigation Restrictions shall become effective September 19, 2008 and shall remain in effect until modified or rescinded by the Governing Board, the Executive Director, or the Executive Director's designee, if the circumstances set forth in Subsection 40E-21.291(5), F.A.C., are present.

22. A copy of the Notice of Rights is attached as Exhibit "D."

**DONE AND SO ORDERED** in West Palm Beach, Florida, on this 16<sup>th</sup> day of September 2008.

SOUTH FLORIDA WATER  
MANAGEMENT DISTRICT

By: *Sheryl G. Wood*  
SHERYL G. WOOD  
General Counsel



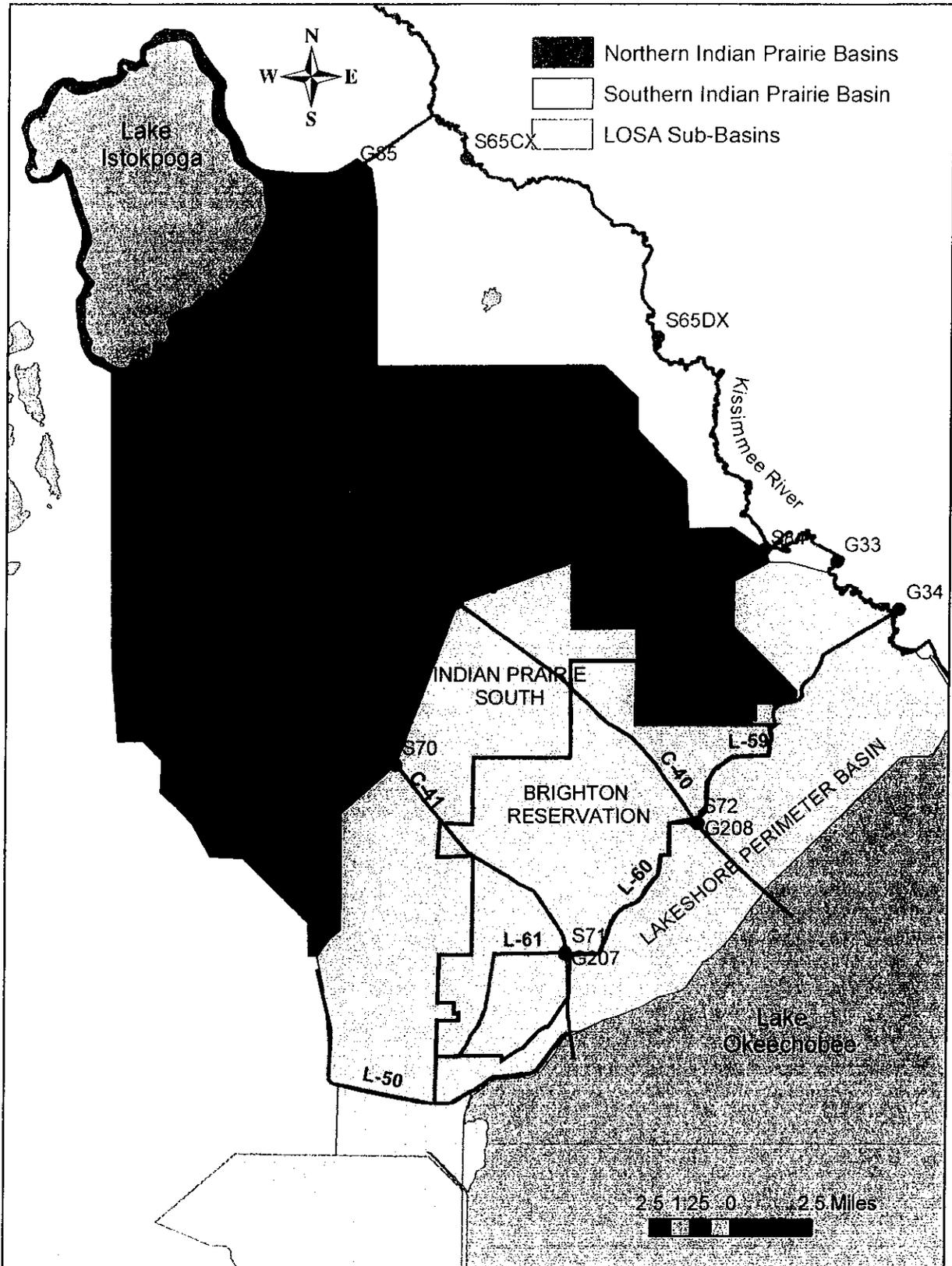
(Corporate seal)  
ATTEST:

By: *Jackie McGorty*  
Assistant Secretary  
Date: September 16, 2008

Legal Form Approved:

By: *Jennifer Bokankowitz*  
Jennifer Bokankowitz, Esq.

**INDIAN PRAIRIE BASINS, LAKESHORE PERIMETER BASIN,  
and PORTIONS of KISSIMMEE RIVER VALLEY  
WATER USE BASIN AFFECTED by  
ORDER No. 2008-409-DAO-WS**



SOUTHWEST FLORIDA WATER MANAGEMENT DISTRICT

IN RE:

DECLARATION OF WATER SHORTAGE

ORDER SWF 07-02

ORDER DECLARING WATER SHORTAGE

The Executive Director of the Southwest Florida Water Management District (District), during a public hearing held on January 9, 2007, at District Headquarters in Brooksville, Florida, received testimony, including data and recommendations from District staff, and comment from the public regarding hydrologic conditions and the declaration of a water shortage within the District. Based upon the testimony, data, staff recommendations and public comment, the Executive Director makes the following Findings of Fact and Conclusions of Law.

**FINDINGS OF FACT**

1. At its November 30, 2006 meeting, the District's Governing Board authorized the Executive Director to declare a water shortage pursuant to the non-emergency provisions of 40D-21, Florida Administrative Code (F.A.C.), the District's Water Shortage Plan ("Plan"), if, in his judgement, it is appropriate to do so prior to the Governing Board meeting on January 30, 2007.
2. The Plan specifies that the District will monitor certain sources of national predictions, indices and conditions and current hydrologic data, including rainfall, stream flow, lakes and ground water levels and certain sources of national predictions and conditions.
3. The Plan establishes Drought Condition Levels that relate the extent to which current rainfall, stream flows and ground water levels are below normal levels. Drought Condition Levels include Moderately, Severely, Extremely and Critically Abnormal. Drought Condition Levels consider regional conditions, and national predictions, indices and conditions (individually "Drought Indicator", collectively "Drought Indicators"). The Drought Condition Levels are described in the Fact Sheet attached to this Order.
4. Drought Indicators are summarized as follows:
  - a. **Rainfall**
    - i. As of December 31, 2006, for the sixteen counties within the District, there is an average rainfall deficit of approximately 11.6 inches, measured as a twelve-month moving sum.



322546

07-02

Declaration of Water Shortage

Department: 0305005 Title Code: 211.1

OR2177

Composite  
Exhibit B

- ii. Citrus, DeSoto, Hardee, Hernando, Highlands, Lake, Levy, Marion, Pasco, Polk, and Sumter, are experiencing rainfall deficits categorized as Critically Abnormal.
- b. **Ground water conditions**
- i. As of January 3, 2007, all or part of fifteen of sixteen counties within the District were experiencing varying levels of below-normal ground water conditions.
  - ii. Sarasota County was the most affected, with part of it experiencing ground water levels categorized as Critically Abnormal.
- c. **Surface water conditions**
- i. As of January 3, 2007, flow data were generally below normal for most rivers. This includes rivers associated with the District's largest surface water-dependent public supply systems.
  - ii. As of January 3, 2007, the stream flow for the Withlacoochee River near Holder was 190 cubic feet per second (cfs). The USGS categorizes this flow as Severe Hydrologic Drought. Under the Plan this flow is Critically Abnormal.
  - iii. The Peace River is the primary water source for the Peace River Manasota Regional Water Supply Authority. The Authority is a wholesale water supplier serving portions of Charlotte, DeSoto, Manatee and Sarasota counties.
  - iv. As of January 3, 2007, the stream flow for the Peace River at Arcadia was 125 cfs, categorized as Extremely Abnormal.
  - v. The Hillsborough River is both a source of water for Tampa Bay Water and a primary water source for the City of Tampa.
  - vi. As of January 3, 2007, the stream flow for the Hillsborough River at Zephyrhills was 76 cfs, categorized as Severely Abnormal.
  - vii. The Alafia River is one of the sources of water for Tampa Bay Water. Tampa Bay Water is a wholesale water supplier serving portions of Hillsborough, Pasco and Pinellas counties.
  - viii. As of January 3, 2007, the stream flow for the Alafia River at Lithia was 109 cfs, which is just within normal limits for that river.
- d. **The U.S. Drought Monitor**
- i. The U.S. Drought Monitor is one of the national Drought Indicators specified in the Plan.

ii. As of January 2, 2007, the Monitor indicates that all sixteen counties within the District were experiencing drought or drought-like conditions.

iii. Citrus, Marion, Polk and Sumter counties were the most affected, generally experiencing Severely Abnormal conditions.

**e. The Standard Precipitation Index**

i. The Standard Precipitation Index is another national Drought Indicator specified in the Plan.

ii. As of November 2006, the Standard Precipitation Index indicates that all sixteen counties have experienced some improvement compared to October 2006, but conditions remained below normal.

iii. Citrus, Hernando, Lake, Levy, Marion, Pasco and Sumter counties were the most affected, generally experiencing Critically Abnormal conditions, the most pronounced level of abnormality defined in the Plan.

**f. The Long-Term Palmer Index**

i. The Long Term Palmer Index is another national Drought Indicator specified in the Plan.

ii. As of December 20, 2006, this Index indicated that all sixteen counties within the District were experiencing drought conditions of a nature that affect water demand for agriculture and other irrigation purposes. Based on this Index, all sixteen counties are Severely Abnormal.

iii. Citrus, Hernando, Lake, Levy, Marion, Pasco, and Sumter counties, as of December 9, 2006, were classified as Extremely Abnormal. Those counties have experienced some improvement in recent weeks, but as of December 20, 2007, they are classified as Severely Abnormal.

**g. The National Oceanic and Atmospheric Administration's Climate Prediction Center ("CPC") Predictions**

i. The CPC Predictions comprise another national Drought Indicator specified in the Plan.

ii. The District has considered all applicable CPC prediction outlooks.

5. The Plan specifies that the Drought Indicators described in paragraph 4. above and Drought Condition Levels are factors to be considered in determining whether a water shortage declaration is warranted. As described above, the Drought Indicators demonstrate that all sixteen counties within the District are experiencing a composite Drought Conditions Level consistent with a declaration of at least a Phase II, Severe Water Shortage, Order.

6. While lake levels are not included in the Plan as a Drought Indicator, the Plan specifies that lake levels, as part of the water resource data collected by the District, shall be considered in determining whether a water shortage should be declared. Current lake level conditions include that:

- a. Lakes in the northern region are 2.64 feet below the bottom of the normal range.
- b. Lakes in the Tampa Bay region are 0.02 foot below the bottom of the normal range.
- c. Lakes in the Polk Uplands region are at the bottom of the normal range.
- d. Lakes in the Lake Wales Ridge region are 1.49 feet below the bottom of the normal range.

7. In addition to evaluating and analyzing quantifiable Drought Indicators to determine the degree to which geographic area(s) and water source(s) are affected by a water shortage, the Plan specifies that District shall take into account several qualitative factors when considering what Phase of restrictions and other response mechanisms should be declared. Pertinent factors include:

- a. Surface water-dependent public supply systems serving the City of Tampa, Tampa Bay Water and the Peace River Manasota Regional Water Supply Authority were significantly affected by this water shortage prior to its impact reaching regional proportions. The District has assisted each of these public supply systems as necessary, including coordination of water conservation messaging efforts.
- b. Local governments associated with these public supply systems have already responded with appropriate local actions, including restrictions substantially consistent with Phase II, Severe Water Shortage restrictions.
- c. The CPC predictions assume that the El Nino weather pattern will produce above-normal rainfall in winter and spring. However, the CPC recently indicated that this pattern may have already started to subside and, even if above average rainfall in the winter and spring does occur, District staff have concluded that areas of the District could remain in a deficit situation for several months.
- d. All ground water and surface water sources throughout the District are currently affected by this water shortage event to varying degrees. All categories of water users are impacting the available sources and contribute to the potential for harm to the natural systems.

e. It is necessary to place all categories of water users under the same level of restrictions until conditions have improved to where water shortage restrictions are determined to be no longer necessary.

### **CONCLUSIONS OF LAW**

8. The Governing Board of the District is duly authorized by Section 373.246(2), Florida Statutes (F.S.), and Chapter 40D-21, F.A.C., to issue Orders declaring the existence of a water shortage within all or part of the District and to impose such restrictions and require such measures as may be necessary to reduce demand on available water supplies.

9. The Governing Board is duly authorized by Section 373.083(5), F.S., to delegate, and has so delegated, its power, duties and functions to the Executive Director to issue a non-emergency water shortage order pursuant to the Plan prior to the Governing Board meeting scheduled for January 30, 2007.

10. County and city officials and all law enforcement authorities are required to enforce orders lawfully issued by the Executive Director pursuant to the Plan and Section 373.609, F.S.

11. The Executive Director held a public hearing on January 9, 2007, at the District's Brooksville headquarters for the purpose of considering data, including quantitative and qualitative indicators, staff recommendations and public input.

12. Upon careful consideration of the Drought Indicators, Drought Condition Levels, District data, qualitative factors, staff recommendations and public input, the Executive Director has determined that a District-wide modified Phase II "Severe Water Shortage" declaration is necessary and should be ordered prior to the next regularly scheduled Governing Board meeting.

### **ORDERED**

**THEREFORE**, based upon the foregoing Findings of Fact and Conclusions of Law, it is hereby **ORDERED**:

13. A Phase II "Severe Water Shortage" as defined in the Plan, is declared for all ground and surface waters within the District's sixteen county area.

14. Except as modified in paragraph 15. below, Phase II "Severe Water Shortage" restrictions and other response mechanisms are hereby ordered for all categories of water users within the District's sixteen county area. These restrictions and other response mechanisms are specified in Chapter 40D-21.601(4), F.A.C., and Chapter 40D-21.631, F.A.C.

15. The Plan's Phase II provision codified in 40D-21.631(6)(c)2.b., F.A.C., limiting lawn watering to one day per week is hereby modified to extend the limitation through July 31, 2007.

16. A Fact Sheet containing a summary of the restrictions and response mechanisms is attached to this Order.

17. County and city officials and all law enforcement authorities shall enforce the Order when requested pursuant to the Plan and Section 373.609, F.S.

18. Water shortage declarations and restrictions enacted prior to this Order by county and city officials affecting their local jurisdictions ("Local Action") that are at least as restrictive as a Phase II Severe Water Shortage under the Plan are hereby ratified and are authorized to continue in effect according to their terms. In the event that a Local Action is less restrictive than this Order, this Order shall supersede the Local Action, unless the county or city officials obtain a variance or waiver from this Order from the District.

19. This order shall expire on July 31, 2007, unless extended or rescinded by Governing Board or Executive Director action on or before that date.

DONE AND ORDERED in Hernando County, Florida, on this 9<sup>th</sup> day of January, 2007.

SOUTHWEST FLORIDA WATER  
MANAGEMENT DISTRICT

By: David L. Moore  
David L. Moore  
Executive Director 1-9-2007

Filed this 9<sup>th</sup> day  
of January, 2007

William M. Lee  
Agency Clerk

## Fact Sheet: Drought Indicators & Drought Condition Levels

### Characterization of Drought Indicators

Analysis of Drought Indicator data includes characterizing each value as either normal or one of four degrees of abnormality. The names of the four degrees are: Moderately Abnormal, Severely Abnormal, Extremely Abnormal and Critically Abnormal.

The range of values associated with each degree of abnormality is based on a comparison to historical data. For example, streamflow is characterized as follows:

- "Moderately Abnormal" means streamflow is at or below the 25<sup>th</sup> percentile\*
- "Severely Abnormal" means streamflow is at or below the 20<sup>th</sup> percentile\*
- "Extremely Abnormal" means that streamflow is at or below the 10<sup>th</sup> percentile\*
- "Critically Abnormal" means that streamflow is at or below the 5<sup>th</sup> percentile\*

\* Percentile is a statistical term that is used in scientific settings. One way to describe this term is that, if 100 pieces of historical data are available for a specific Drought Indicator, a current value in the 19<sup>th</sup> percentile means that conditions have been better 81 times (and only as bad or worse 19 times).

### Determination of Drought Condition Level

Analysis also includes reviewing the characterizations of individual Drought Indicators for any given geographical area or water source of interest. This review results in a composite Drought Level Condition Level being determined, as follows:

<b>Drought Condition</b>	<b>Applicable Drought Indicators</b>
Level 1	At least one Drought Indicator is Moderately Abnormal
Level 2	Multiple Drought Indicators are Moderately Abnormal (or one is Severely Abnormal)
Level 3	Multiple Drought Indicators are Severely Abnormal (or one is Extremely Abnormal)
Level 4	Multiple Drought Indicators are Extremely Abnormal (or one is Critically Abnormal)

The individual Drought Indicators, composite Drought Condition Level(s) and other pertinent facts (including qualitative factors) are considered in order to decide what Water Shortage Phase should be declared.

**NOTE: this fact sheet is a summary of Table 21-1, Table 21-2 and associated text; please refer to Chapter 40D-21.221, F.A.C. for complete details**

## Summary Fact Sheet Modified "Phase II" (Severe Water Shortage) Restrictions

### All Water Uses

- These restrictions go into effect on January 16 and are scheduled to expire on July 31, unless rescinded or otherwise modified prior to that date.
- These restrictions apply to the use of water from public and private water utilities as well as the use of all wells and surface water sources (ponds, rivers, etc.).
- This fact sheet is only a summary. All water users should review Water Shortage Order SWF 07-02 and the District's Water Shortage Plan for complete details; both items are available online (at [www.WaterMatters.org](http://www.WaterMatters.org)).

### Lawn & Landscape Watering

- If your city or county already has a once-per-week schedule in effect, your watering day will remain the same.
- If you were previously allowed to follow a twice-per-week schedule, you now need to follow the schedule shown below.
- Unless your city or county already has stricter hours in effect, properties under two acres in size may only water before 8 a.m. or after 6 p.m.
- Unless your city or county already has stricter hours in effect, properties two acres or larger may only water before 10 a.m. or after 4 p.m.
- Variances are available if a property proposes an alternative irrigation plan (such as splitting a large property into two pieces and assigning a different day to each piece).
- Handwatering or microirrigation of non-lawn landscape is allowed.
- Certain limited exemptions are available, such as allowances for new plant material.

Addresses with "house numbers" ending in ...	May only irrigate on...
0 or 1	Monday
2 or 3	Tuesday
4 or 5	Wednesday
6 or 7	Thursday
8 or 9	Friday

### Local Governments & Water Utilities

- Assist the District with water shortage restriction enforcement, including coverage for cases referred by the District (when a Water Use Permit is not involved).
- Review the availability of backup water supplies for potable and fire-fighting purposes.
- Institute/accelerate local water conservation efforts, including a water system audit.
- Implement appropriate changes to water system flushing, including on-site signage.

### Golf Courses, Agricultural Operations & Other Water Users

- Fountains and other aesthetic-only water features may only operate 8 hours per day.
- Car washing is limited to once per week; however, fundraiser events are still allowed.
- Comply with all Water Use Permit conditions, including allowable drought quantities.
- Reduce off-site discharge and mobile equipment washing.
- Follow applicable best management practices, including watering times and applications.

*For complete details or to ask questions about these restrictions, visit the District's website ([www.WaterMatters.org](http://www.WaterMatters.org)) or call 1-800-848-0499 or 1-800-423-1476, extension 4498, during normal business hours.*

## SOUTHWEST FLORIDA WATER MANAGEMENT DISTRICT

IN RE:

DECLARATION OF WATER  
SHORTAGE EMERGENCY RELATING  
TO USE OF THE PEACE RIVER

---

### EXECUTIVE DIRECTOR ORDER NO. SWF 07-045

David L. Moore, Executive Director of the Southwest Florida Water Management District, a public corporation (DISTRICT), at District Headquarters, 2379 Broad Street, Brooksville, Florida, received evidence and information from District staff and representatives of the Peace River Manasota Regional Water Supply Authority (AUTHORITY), regarding drought conditions causing a public water supply shortage within the AUTHORITY's Regional System and low water levels in its reservoir and both ASR wellfields, thereby creating a public health, safety and welfare emergency, and based upon such evidence and information finds and determines:

#### FINDINGS OF FACT

1. Section 373.246, Florida Statutes (F.S.), requires each water management district to adopt a Water Shortage Plan (PLAN) as a means of assuring appropriate responses to droughts and other types of water shortage events.
2. Chapter 62-40, Florida Administrative Code (F.A.C.), directs each water management district to incorporate certain features into its PLAN.
3. Chapter 40D-21, F.A.C., constitutes the DISTRICT's PLAN and was modified in April 2006, to assure compliance with provisions of Chapter 62-40, F.A.C.
4. Part III of Chapter 40D-21, F.A.C., sets forth the emergency provisions of the PLAN.
5. Rule 40D-21.331(3), F.A.C., specifies that, if the DISTRICT determines that conditions are rapidly deteriorating, or if the DISTRICT receives a request for emergency action, the DISTRICT shall ascertain if emergency actions are necessary to protect public health, safety or welfare, considering such factors as whether the affected users can obtain water from other users or other sources on

a temporary basis and whether there are recommendations from, and emergency actions taken by, a local government in the affected area.

6. Rule 40D-21.371(1), F.A.C., specifies that the Executive Director of the DISTRICT may issue orders containing response mechanisms deemed necessary to address such an emergency, and that these mechanisms may include authorizations to temporarily withdraw from a permitted source in a manner or for a purpose not expressly granted by the applicable Water Use Permit; and restrictions that involve apportioning, rotating, limiting, or prohibiting the use of water.
7. Rules 40D-21.391(1), (2) and (3), F.A.C., allow for such emergency orders to be issued without prior notice, subject to concurrence by the DISTRICT's Governing Board and proper notice to affected water users and local officials.
8. The Peace River is the AUTHORITY's primary source of water to meet potable water needs of over 250,000 residents within portions of the AUTHORITY's service area, including the City of North Port and the counties of Charlotte, DeSoto, Sarasota and Manatee (Manatee County does not currently receive water from the AUTHORITY). The AUTHORITY is experiencing a potable water demand of approximately 16.05 million gallons per day (mgd), on a 12-month running average, and there are no readily available alternative sources of water which would be able to meet this demand.
9. The AUTHORITY makes withdrawals from the Peace River in accordance with Water Use Permit No. 20010420.004 (PERMIT). The PERMIT includes the following conditions:
  - a. Special Condition #7A stipulates that no diversion from the Peace River intake (DISTRICT withdrawal point number 14) may occur when the average daily flow of the river as read at the Arcadia Station (USGS gauge 02296750) for the previous day is less than 130 cubic feet per second (cfs).
  - b. Special Condition #7B stipulates that the amount of diversion from the Peace River intake (DISTRICT withdrawal point number 14) shall not exceed 10 percent of the average daily flow of the river as read at the Arcadia Station for the previous day.
  - c. Standard Condition #4 stipulates that the DISTRICT may modify the PERMIT in the event the DISTRICT declares a water shortage event.
10. The AUTHORITY has requested emergency DISTRICT water shortage action which would temporarily modify Special Condition #7B of the PERMIT. Specifically, the maximum amount of diversion from the Peace River intake would be based on 12 percent of the combined average daily flow as measured at the Arcadia Station, Horse Creek (USGS gauge 022297310) and Joshua Creek (USGS gauge 02297100) for the previous day.

11. During periods of high river flow, the AUTHORITY typically stores raw water in its reservoir and stores treated water in its two Aquifer Storage and Recovery (ASR) wellfields for later use during the annual dry season or whenever same-day river withdrawals are not sufficient to meet potable water demand.
12. When full, the AUTHORITY's reservoir stores approximately 625 million gallons of water. As of August 5, 2007, the reservoir only had 304 million gallons of water in storage.
13. When at capacity, the AUTHORITY's two ASR wellfields together store approximately 7.3 billion gallons. As of August 5, 2007, the ASR wellfields had essentially no water in storage.
14. The AUTHORITY has estimated that, even if flow conditions in the Peace River were to return to normal for the remainder of the rainy season, its normal withdrawal schedule would result in it having only 1.2 billion gallons of water in storage by the end of the rainy season. Compared to a total storage capacity of more than 7.9 billion gallons, actual storage of only 1.2 billion gallons represents an extremely low water supply condition in which to begin the dry season.
15. DISTRICT staff has determined that the following hydrologic factors, including designated water resource indicators in the PLAN, are occurring and contributing to or exacerbating the local water supply situation:
  - a. Stream flow is below normal in the Peace River watershed. Normal stream flow is defined as the 25th to 75th percentile range. As measured at the Arcadia Station, stream flow is at the 6<sup>th</sup> percentile (8-week moving average, as of August 7, 2007).
  - b. Rainfall is also below normal in both major portions of the Peace River watershed. During the past twelve months (August 2006 through July 2007) the southern basin of the Peace River received only 44.17 inches, compared to a typical historical value of 52.08 inches, resulting in a rainfall deficit of 7.91 inches. During that same time period, the northern basin of the Peace River watershed received only 39.89 inches, compared to a typical historical value of 52.25 inches, resulting in a rainfall deficit of 12.36 inches. Rainfall in the southern basin can produce short-term improvement in the flow at the Arcadia gauge; however, rainfall in the northern basin is needed to produce sustained improvement in flow at the Arcadia Station.
  - c. The U.S. Drought Monitor has designated the AUTHORITY's entire service area as experiencing "D1" ("Moderate Drought") conditions as of August 7, 2007. The U.S. Drought Monitor has been detecting drought or drought-like conditions in this area for several months, and these conditions have resulted in below-normal river flows and an increased need for irrigation. The net effect in

the AUTHORITY's service area is that there has been decreased river water available to meet potable demands and replenish storage.

d. As of July 19, the Climate Prediction Center's rainfall prediction for August rainfall is uncertain. As of July 19, the prediction of above-normal rainfall in the subsequent three-month time period is dependent on tropical activity and tropical activity forecasts have been recently downgraded.

16. In combination with uncertain and downgraded rainfall predictions, the current water resource conditions and resulting water supply conditions, especially the low amount of water in the AUTHORITY's reservoir and two ASR wellfields, constitute a threat to both public water supply and to public health, safety and welfare.

17. The AUTHORITY has already taken and is taking the following actions:

a. In the fall of 2006, the AUTHORITY initiated dry-season planning meetings with its members, customer governments and the DISTRICT. This planning process encouraged local demand management action, such as the emergency water conservation rates subsequently passed by Charlotte County in December 2006.

b. In March 2007, the AUTHORITY obtained a water quality exemption from the Florida Department of Environmental Protection's drinking water program. This exemption allows certain secondary treatment standards to be exceeded, allowing available water to be more fully utilized as long as public health is still protected.

c. On April 4 2007, the AUTHORITY's Board of Directors passed a resolution declaring a Temporary Water Supply Emergency due to drought conditions. This resolution called for demand management. In response, the customer governments have enhanced local water conservation education efforts, maintained and enforced local water restrictions, and promoted rebates and other ongoing local water conservation projects. In addition, the AUTHORITY, in consultation with the DISTRICT, has increased its own media messaging efforts.

d. The AUTHORITY, in consultation with its customer governments and the DISTRICT, has identified and evaluated several water supply and water quality treatment options that can be used to help meet demand until its second reservoir is constructed and fully operational (currently scheduled for completion in June 2009). The AUTHORITY is now in the process of pursuing appropriate implementation of key options. Implementation of this emergency request is a means by which to temporarily implement one of the key options.

18. In response to the regionalization of previously localized drought impacts, the DISTRICT issued Order SWF 07-02 on January 9, 2007. That Order

declared a "water shortage" event and imposed specific water use restrictions, including a once-per-week lawn watering schedule and other provisions. On July 31, 2007, that Order was extended by the DISTRICT Governing Board until September 30, 2007. The DISTRICT continues to monitor conditions to determine if additional regional response or local assistance is necessary.

19. In response to the AUTHORITY's low water supply storage conditions, the District issued a temporary authorization, pursuant to a special condition of the PERMIT, which allowed the AUTHORITY to make withdrawals from ASR wells which constituted overdrafting the available storage, if necessary, to meet its potable water demand. This authorization was issued on July 2, 2007 and was limited to 17 million gallons per day for a duration of no more than 30 days. As of July 5, 2007, river flows improved sufficiently for the AUTHORITY to meet its potable water demand and use of the ASR wells has been discontinued.

20. The AUTHORITY reports that the above described demand-management and supply-management actions are not sufficient to protect public health, safety or welfare for the persons served by the AUTHORITY and its customer governments.

#### **ULTIMATE FINDINGS OF FACT**

21. The exercise of the non-emergency powers under subsections 373.175(1) and (2) and 373.246(1), F.S., and Part II of Chapter 40D-21, F.A.C., are not sufficient to protect the public health, safety, or welfare, nor the drinking water supply of persons who depend upon THE AUTHORITY.

22. In order to mitigate the effects of the rainfall deficit on, and to make water available for storage in the AUTHORITY's reservoir and two ASR wellfields, the AUTHORITY has requested emergency DISTRICT water shortage action which would temporarily modify Special Condition #7B of the PERMIT. Specifically, the maximum amount of diversion from the Peace River intake would be based on 12 percent of the combined average daily flow as measured at the Arcadia Station, Horse Creek and Joshua Creek for the previous day.

#### **CONCLUSIONS OF LAW**

23. The Executive Director of the DISTRICT is duly authorized by subsections 373.119(2), 373.175(4), and 373.246(7), F.S., and Rule 40D-21.331(5), F.A.C., to declare a water shortage emergency and to issue emergency orders reciting the existence of an emergency and requiring that action be taken as deemed necessary to meet the emergency.

24. The PERMIT, Water Use Permit No. 20010420.004, includes a condition authorizing the DISTRICT to modify the PERMIT in the event the DISTRICT declares a water shortage.

**ORDERED**

25. A water shortage emergency is declared for the AUTHORITY's reservoir and two ASR wellfields, to help protect the reliability of the drinking water supply for over 250,000 residents within portions of the AUTHORITY's service area, including the City of North Port and the counties of Charlotte, DeSoto and Sarasota (Manatee County does not currently receive water from the AUTHORITY), including associated fire suppression systems, hospitals, schools, businesses and governmental and community facilities.

26. The PERMIT is hereby modified as follows: In lieu of the diversion schedule described in Special Condition #7B, the amount of diversion from the Peace River intake shall not exceed 12 percent of the combined average daily flow as measured at the Arcadia Station, Horse Creek and Joshua Creek for the previous day.

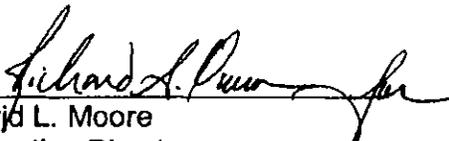
27. Except as provided in paragraph 26. above, all other terms and conditions of the PERMIT shall remain in full force and effect.

28. All local governments receiving water from the AUTHORITY shall retain local once-per-week lawn watering ordinances and shall continue to aggressively enforce the stricter provisions of these ordinances and applicable DISTRICT water shortage restrictions for the duration of this Order.

29. This Order shall expire on August 29, 2007, unless rescinded or extended by Governing Board or Executive Director action on or before that date.

DONE AND ORDERED in Hernando County, Florida, as of August 13, 2007.

Southwest Florida Water  
Management District

By:   
David L. Moore  
Executive Director

JRP

Filed this 13<sup>th</sup> day  
of August, 2007.

  
\_\_\_\_\_  
Agency Clerk

(SEAL)

## NOTICE OF RIGHTS

Persons to whom this Executive Director Order is directed, or whose substantial interests are affected, may request pursuant to subsection 373.119(3), Florida Statutes (F.S.), to petition for an administrative hearing in accordance with Sections 120.569 and 120.57, F.S., and Chapter 28-106, Florida Administrative Code (F.A.C.). A request for a hearing must: 1) explain how the petitioner's or other person's substantial interests will be affected by the District's action; 2) state all material facts disputed by the petitioner or other person, or state that there are no disputed facts; and 3) otherwise comply with Chapter 28-106, F.A.C.

A request for hearing must be filed with and received by the Agency Clerk of the District at District Headquarters, 2379 Broad Street, Brooksville, Florida 34604-6899 within twenty-one (21) days of receipt of this notice. Receipt is deemed to be the fifth day after the date on which this notice is deposited in the United States mail. Failure to file a request for hearing within this time period shall constitute a waiver of any right you or any other person may have to request a hearing under Sections 120.569 and 120.57, F.S.

Mediation pursuant to Section 120.573, F.S., and Rule 28-106.111, F.A.C., to settle an administrative dispute regarding the District's action in this matter is not available prior to the filing of a request for hearing.

In accordance with subsection 120.569(1), F.S., the following additional administrative or judicial review may be available.

A party who is adversely affected by final agency action may seek review of the action in the appropriate District Court of Appeal pursuant to Section 120.68, F.S., by filing a Notice of Appeal pursuant to Rule 9.110, Florida Rules of Appellate Procedure, within thirty (30) days after the rendering of the final action by the District.

**PURSUANT TO SUBSECTION 373.119(3), F.S., AND NOTWITHSTANDING ANY OTHER PROVISION UNDER CHAPTER 120, F.S., PERSONS TO WHOM THE ORDER IS DIRECTED SHALL COMPLY THEREWITH IMMEDIATELY, AND THE TIMELY FILING OF A PETITION SHALL NOT STAY SUCH PERSON'S OBLIGATION TO MAINTAIN SUCH COMPLIANCE DURING THE PENDENCY OF ANY ADMINISTRATIVE PROCEEDING.**

SOUTHWEST FLORIDA WATER MANAGEMENT DISTRICT

IN RE:

DECLARATION OF WATER  
SHORTAGE EMERGENCY RELATING  
TO USE OF THE PEACE RIVER  
TO AUGMENT THE PEACE RIVER / MANASOTA  
REGIONAL WATER SUPPLY AUTHORITY'S RESERVOIR  
AND AQUIFER STORAGE AND RECOVERY WELLFIELDS

---

FIRST MODIFICATION TO  
EXECUTIVE DIRECTOR ORDER NO. SWF 07-045

David L. Moore, Executive Director of the Southwest Florida Water Management District, a public corporation (DISTRICT), at District Headquarters, 2379 Broad Street, Brooksville, Florida, received evidence and information from District staff and representatives of the Peace River / Manasota Regional Water Supply Authority (AUTHORITY), regarding drought conditions causing an ongoing public water supply shortage within the AUTHORITY's Regional System and low water levels in its reservoir and both ASR wellfields, thereby causing an ongoing public health, safety and welfare emergency, and based upon such evidence and information finds and determines:

**FINDINGS OF FACT**

1. Section 373.246, Florida Statutes (F.S.), requires each water management district to adopt a Water Shortage Plan (PLAN) as a means of assuring appropriate responses to droughts and other types of water shortage events.
2. Chapter 40D-21, Florida Administrative Code (F.A.C.), constitutes the DISTRICT's PLAN.
3. Part III of Chapter 40D-21, F.A.C., sets forth the emergency provisions of the PLAN.
4. Within Part III of the Plan, Rule 40D-21.331(3), F.A.C., specifies that, if the DISTRICT determines that conditions are rapidly deteriorating, or if the DISTRICT receives a request for emergency action, the DISTRICT shall ascertain if emergency actions are necessary to protect public health, safety or welfare, considering such factors as whether the affected users can obtain water from other users or other sources on a temporary basis and whether there are

recommendations from, and emergency actions taken by, a local government in the affected area.

5. Rule 40D-21.371(1), F.A.C., specifies that the Executive Director of the DISTRICT may issue orders containing response mechanisms deemed necessary to address such an emergency, and that these mechanisms may include authorizations to temporarily withdraw from a permitted source in a manner or for a purpose not expressly granted by the applicable Water Use Permit; and restrictions that involve apportioning, rotating, limiting, or prohibiting the use of water.

6. Rules 40D-21.391(1), (2) and (3), F.A.C., allow for such emergency orders to be issued by the Executive Director without prior notice, subject to concurrence by the DISTRICT's Governing Board and proper notice to affected water users and local officials.

7. The AUTHORITY has been issued Water Use Permit No. 20010420.004 (the PERMIT) authorizing withdrawals from the Peace River at the Authority's intake structure.

8. The AUTHORITY has requested emergency DISTRICT water shortage action which would allow it to continue diversion from the Peace River intake as specified in Executive Director Order No. SWF 07-045. Specifically, the AUTHORITY has requested that terms of this emergency order be extended beyond the original August 29, 2007 expiration date.

9. The AUTHORITY has also requested a temporary modification to Special Condition #7A of the PERMIT that was not previously modified in Executive Director Order No. SWF 07-045. Specifically, the AUTHORITY has requested that the low flow threshold for diversions be changed to 90 cubic feet per second (cfs) based on the combined daily flow at the Arcadia Station, Horse Creek near Arcadia (USGS gauge 02297310) and Joshua Creek at Nocatee (USGS gauge 02297100) for the previous day instead of the normal cut-off of 130 cfs at the Arcadia Station only.

10. As of August 26, 2007, the AUTHORITY has been able to store approximately 181 million gallons of water since Executive Director Order No. SWF 07-045 was issued on August 13, 2007, to temporarily enhance the AUTHORITY's ability to capture surface water.

11. As of August 26, 2007, the AUTHORITY has about 485 million gallons of water in storage, with 431 million gallons of that in its reservoir and the balance in its Aquifer Storage and Recovery (ASR) Wellfield #1. It currently does not have any water in storage in ASR Wellfield #2. This compares to a combined storage capacity (reservoir and two ASR wellfields) of 7.9 billion gallons.

12. The AUTHORITY has estimated that, under current conditions, its normal withdrawal schedule would result in it having only 1.1 billion gallons of water in storage by the end of the rainy season. Compared to a total storage capacity of more than 7.9 billion gallons, actual storage of only 1.1 billion gallons represents an extremely low water supply condition in which to begin the dry season.

13. In order to help meet the public health, welfare and safety needs of its service area during the upcoming dry season, the AUTHORITY endeavors to have more than 1.1 billion gallons of water in storage by the end of the rainy season. In order to maximize stored reserves, the AUTHORITY must continue capturing as much surface water as possible.

14. The AUTHORITY has not experienced any substantive improvement in potable water demand reductions or available water sources, other than improved storage, compared to the conditions reported in Executive Director Order No. SWF 07-045.

15. DISTRICT staff has determined that the hydrologic factors, including designated water resource indicators in the PLAN, have not experienced significant improvement, compared to the conditions reported in Executive Director Order No. SWF 07-045. District staff have further determined that Climate Prediction Center rainfall predictions have worsened; as of August 16, 2007, new information indicates that rainfall is expected to be below normal during the upcoming late fall, winter and spring months.

16. In combination with updated rainfall predictions, the current water resource conditions and resulting water supply conditions, especially the low amount of water in the AUTHORITY's reservoir and two ASR wellfields, continue to constitute a threat to both public water supply and to public health, safety and welfare.

#### **ULTIMATE FINDINGS OF FACT**

17. The exercise of the non-emergency powers under subsections 373.175(1) and (2) and 373.246(1), F.S., and Part II of Chapter 40D-21, F.A.C., are not sufficient to protect the public health, safety, or welfare, nor the drinking water supply of persons who depend upon the AUTHORITY.

18. In order to mitigate the effects of the rainfall deficit on, and to make water available for storage in the AUTHORITY's reservoir and two ASR wellfields, the AUTHORITY has requested that the DISTRICT authorize the AUTHORITY to:

a. Continue to take surface water diversions from the Peace River intake based on a maximum of 12 percent of the combined daily flow at the Arcadia Station, Horse Creek near Arcadia (USGS gauge 02297310) and Joshua Creek at Nocatee (USGS gauge 02297100) for the previous day.

b. Take these surface water diversions whenever the previous day's combined daily flow at the Arcadia Station, Horse Creek near Arcadia (USGS gauge 02297310) and Joshua Creek at Nocatee (USGS gauge 02297100) is at least 90 cfs.

### **CONCLUSIONS OF LAW**

19. The Executive Director of the DISTRICT is duly authorized by subsections 373.119(2), 373.175(4) and 373.246(7), F.S., and Rule 40D-21.331(5), F.A.C., to declare a water shortage emergency and to issue emergency orders reciting the existence of an emergency and requiring that action be taken as deemed necessary to meet the emergency.

20. The PERMIT includes a condition authorizing the DISTRICT to modify the PERMIT in the event the DISTRICT declares a water shortage.

### **ORDERED**

21. A water shortage emergency is continuing for the AUTHORITY's reservoir and two ASR wellfields. The ongoing emergency is putting at risk the reliability of the drinking water supply for over 250,000 residents within portions of the AUTHORITY's service area, which includes the City of North Port and the counties of Charlotte, DeSoto, Sarasota and Manatee (Manatee County does not currently receive water from the AUTHORITY), including associated fire suppression systems, hospitals, schools, businesses and governmental and community facilities.

22. The PERMIT is hereby modified as follows: in lieu of the low flow threshold provided in Special Condition #7A, diversions are allowed whenever the previous day's combined daily flow at the Arcadia Station, Horse Creek near Arcadia (USGS gauge 02297310) and Joshua Creek at Nocatee (USGS gauge 02297100) is at least 90 cfs.

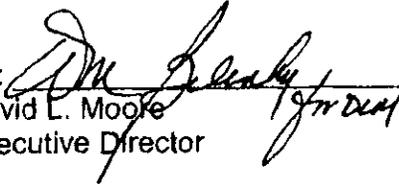
23. The expiration date for Executive Director Order No. SWF 07-045 is hereby extended to October 31, 2007, unless rescinded or further extended by Governing Board or Executive Director action on or before that date.

24. Except as provided in paragraphs 22. and 23., above, all other terms and conditions of Executive Director Order No. SWF 07-045 shall remain in full force and effect.

DONE AND ORDERED in Hernando County, Florida, as of August 29, 2007.

Southwest Florida Water  
Management District

Filed this 29<sup>th</sup> day  
of August, 2007.

By:   
David L. Moore  
Executive Director

  
Agency Clerk

(SEAL)

## **NOTICE OF RIGHTS**

Persons to whom this Executive Director Order is directed, or whose substantial interests are affected, may request pursuant to subsection 373.119(3), Florida Statutes (F.S.), to petition for an administrative hearing in accordance with Sections 120.569 and 120.57, F.S., and Chapter 28-106, Florida Administrative Code (F.A.C.). A request for a hearing must: 1) explain how the petitioner's or other person's substantial interests will be affected by the District's action; 2) state all material facts disputed by the petitioner or other person, or state that there are no disputed facts; and 3) otherwise comply with Chapter 28-106, F.A.C.

A request for hearing must be filed with and received by the Agency Clerk of the District at District Headquarters, 2379 Broad Street, Brooksville, Florida 34604-6899 within twenty-one (21) days of receipt of this notice. Receipt is deemed to be the fifth day after the date on which this notice is deposited in the United States mail. Failure to file a request for hearing within this time period shall constitute a waiver of any right you or any other person may have to request a hearing under Sections 120.569 and 120.57, F.S.

Mediation pursuant to Section 120.573, F.S., and Rule 28-106.111, F.A.C., to settle an administrative dispute regarding the District's action in this matter is not available prior to the filing of a request for hearing.

In accordance with subsection 120.569(1), F.S., the following additional administrative or judicial review may be available.

A party who is adversely affected by final agency action may seek review of the action in the appropriate District Court of Appeal pursuant to Section 120.68, F.S., by filing a Notice of Appeal pursuant to Rule 9.110, Florida Rules of Appellate Procedure, within thirty (30) days after the rendering of the final action by the District.

**PURSUANT TO SUBSECTION 373.119(3), F.S., AND NOTWITHSTANDING ANY OTHER PROVISION UNDER CHAPTER 120, F.S., PERSONS TO WHOM THE ORDER IS DIRECTED SHALL COMPLY THEREWITH IMMEDIATELY, AND THE TIMELY FILING OF A PETITION SHALL NOT STAY SUCH PERSON'S OBLIGATION TO MAINTAIN SUCH COMPLIANCE DURING THE PENDENCY OF ANY ADMINISTRATIVE PROCEEDING.**

# SOUTHWEST FLORIDA WATER MANAGEMENT DISTRICT

IN RE:

DECLARATION OF WATER  
SHORTAGE EMERGENCY RELATING  
TO USE OF THE PEACE RIVER  
TO AUGMENT THE PEACE RIVER / MANASOTA  
REGIONAL WATER SUPPLY AUTHORITY'S RESERVOIR  
AND AQUIFER STORAGE AND RECOVERY WELLFIELDS

---

## SECOND MODIFICATION TO EXECUTIVE DIRECTOR ORDER NO. SWF 07-045

David L. Moore, Executive Director of the Southwest Florida Water Management District, a public corporation (DISTRICT), at District Headquarters, 2379 Broad Street, Brooksville, Florida, received evidence and information from District staff and representatives of the Peace River / Manasota Regional Water Supply Authority (AUTHORITY), regarding drought conditions causing an ongoing public water supply shortage within the AUTHORITY's Regional System and low water levels in its reservoir and both ASR wellfields, thereby causing an ongoing public health, safety and welfare emergency, and based upon such evidence and information finds and determines:

### FINDINGS OF FACT

1. Section 373.246, Florida Statutes (F.S.), requires each water management district to adopt a Water Shortage Plan (PLAN) as a means of assuring appropriate responses to droughts and other types of water shortage events.
2. Chapter 40D-21, Florida Administrative Code (F.A.C.), constitutes the DISTRICT's PLAN.
3. Part III of Chapter 40D-21, F.A.C., sets forth the emergency provisions of the PLAN.
4. Within Part III of the Plan, Rule 40D-21.331(3), F.A.C., specifies that, if the DISTRICT determines that conditions are rapidly deteriorating, or if the DISTRICT receives a request for emergency action, the DISTRICT shall ascertain if emergency actions are necessary to protect public health, safety or welfare, considering such factors as whether the affected users can obtain water from other users or other sources on a temporary basis and whether there are

recommendations from, and emergency actions taken by, a local government in the affected area.

5. Rule 40D-21.371(1), F.A.C., specifies that the Executive Director of the DISTRICT may issue orders containing response mechanisms deemed necessary to address such an emergency, and that these mechanisms may include authorizations to temporarily withdraw from a permitted source in a manner or for a purpose not expressly granted by the applicable Water Use Permit; and restrictions that involve apportioning, rotating, limiting, or prohibiting the use of water.

6. Rules 40D-21.391(1), (2) and (3), F.A.C., allow for such emergency orders to be issued by the Executive Director without prior notice, subject to concurrence by the DISTRICT's Governing Board and proper notice to affected water users and local officials.

7. The AUTHORITY has been issued Water Use Permit No. 20010420.004 (the PERMIT) authorizing withdrawals from the Peace River at the Authority's intake structure.

8. The AUTHORITY has requested emergency DISTRICT water shortage action which would allow it to continue taking withdrawals from the Peace River intake as specified in Executive Director Order No. SWF 07-045 and further modify the temporary change in diversion schedule previously authorized in the First Modification to Executive Director Order No. SWF 07-045 to be consistent with the DISTRICT's proposed minimum flow schedule for the lower Peace River. Specifically, the AUTHORITY has requested:

a. That terms of this emergency order be extended beyond the October 31, 2007 expiration date, to a new expiration date of April 19, 2008.

b. Continuation of the temporary modification to Special Condition #7A of the PERMIT as specified in the First Modification to Executive Director Order No. SWF 07-045. This modification temporarily changes the low flow threshold for diversions to 90 cubic feet per second (cfs) based on the combined daily flow at the Peace River at Arcadia gauge (USGS gauge 02296750), Horse Creek near Arcadia (USGS gauge 02297310) and Joshua Creek at Nocatee (USGS gauge 02297100) for the previous day instead of the normal cut-off of 130 cfs at the Peace River at Arcadia (USGS gauge 02296750) only.

c. Addition of a temporary modification to Special Condition #7B of the PERMIT, in lieu of the modification previously authorized in Executive Director Order No. SWF 07-045. Specifically, temporarily change the allowable diversion from the Peace River intake to the following schedule, in lieu of the previously authorized maximum diversion of 12 percent combined flow and instead of the normal maximum diversion of 10 percent of the average daily flow of the river as read at the Arcadia gauge only:

Maximum Diversion Shall Not Exceed:	Under These Conditions:
14 percent of the combined daily flow at the Arcadia, Horse Creek and Joshua Creek gauges for the previous day	combined flow is between 90 cfs and 330 cfs
46.2 cfs (14 percent of the combined daily flow at 330 cfs) plus 21 percent of the combined daily flow above 330 cfs at the Arcadia, Horse Creek and Joshua Creek gauges	combined flow is above 330 cfs

9. As of October 28, 2007, the AUTHORITY has been able to store approximately 732 million gallons of water since Executive Director Order No. SWF 07-045 was issued on August 13, 2007, to temporarily enhance the AUTHORITY's ability to capture surface water.

10. As of October 28, 2007, the AUTHORITY has approximately 1.1 billion gallons of water in storage, with about 0.575 billion gallons of that in its reservoir and the balance in its two Aquifer Storage and Recovery (ASR) wellfields. This compares to a combined storage capacity (reservoir and two ASR wellfields) of 7.9 billion gallons, and represents an extremely low water supply condition at the beginning of the annual dry season.

11. The AUTHORITY requests the emergency authorization described in paragraph 8. above to continue capturing as much surface water as possible in order to meet current demand and increase its stored reserves for later use when surface water diversions are not available. Capturing this surface water is an integral component of seven projects being pursued by the AUTHORITY to bolster available supplies and maintain sufficient water quality in order to meet the public health, welfare and safety needs of its service area during the current dry season, which lasts through June 2008.

12. DISTRICT staff has determined that the hydrologic factors, including designated water resource indicators in the PLAN, have not experienced significant improvement, compared to the conditions reported in Executive Director Order No. SWF 07-045. District staff has further determined that Climate Prediction Center rainfall predictions have worsened since the Order was originally issued; as of October 18, 2007, new information indicates that rainfall is expected to be below normal during the upcoming winter and spring months.

13. In combination with updated rainfall predictions, the current water resource conditions and resulting water supply conditions, especially the low amount of storage in the AUTHORITY's reservoir and two ASR wellfields, continue to constitute a threat to both public water supply and to public health, safety and welfare.

## **ULTIMATE FINDINGS OF FACT**

14. The exercise of the non-emergency powers under subsections 373.175(1) and (2) and 373.246(1), F.S., and Part II of Chapter 40D-21, F.A.C., are not sufficient to protect the public health, safety, or welfare, nor the drinking water supply of persons who depend upon the AUTHORITY.

15. In order to mitigate the effects of the rainfall deficit on, and to make water available for storage in the AUTHORITY's reservoir and two ASR wellfields, the AUTHORITY has requested that the DISTRICT authorize the AUTHORITY to take surface water diversions from the Peace River intake based on the DISTRICT's proposed minimum flows for the lower Peace River which provides for a two-phase withdrawal schedule based on the combined daily flow at the Peace River at Arcadia (USGS gauge 02296750), Horse Creek near Arcadia (USGS gauge 02297310) and Joshua Creek at Nocatee (USGS gauge 02297100) for the previous day.

## **CONCLUSIONS OF LAW**

16. The Executive Director of the DISTRICT is duly authorized by subsections 373.119(2), 373.175(4) and 373.246(7), F.S., and Rule 40D-21.331(5), F.A.C., to declare a water shortage emergency and to issue emergency orders reciting the existence of an emergency and requiring that action be taken as deemed necessary to meet the emergency.

17. The PERMIT includes a condition authorizing the DISTRICT to modify the PERMIT in the event the DISTRICT declares a water shortage.

## **ORDERED**

18. A water shortage emergency is continuing for the AUTHORITY's reservoir and two ASR wellfields. The ongoing emergency is putting at risk the reliability of the drinking water supply for over 250,000 residents within portions of the AUTHORITY's service area, which includes the City of North Port and the counties of Charlotte, DeSoto, Sarasota and Manatee (Manatee County does not currently receive water from the AUTHORITY), including associated fire suppression systems, hospitals, schools, businesses and governmental and community facilities.

19. The PERMIT is hereby modified as follows:

a. In lieu of the low flow threshold provided in Special Condition #7A, diversions are allowed whenever the previous day's combined daily flow at the Peace River at Arcadia (USGS gauge 02296750), Horse Creek near Arcadia (USGS gauge 02297310) and Joshua Creek at Nocatee (USGS gauge 02297100) is at least 90 cfs.

b. In lieu of the diversion schedule provided in Special Condition #7B, the amount of diversion from the Peace River intake may follow this schedule:

Maximum Diversion Shall Not Exceed:	Under These Conditions:
14 percent of the combined daily flow at the Arcadia, Horse Creek and Joshua Creek gauges for the previous day	combined flow is between 90 cfs and 330 cfs
46.2 cfs (14 percent of the combined daily flow at 330 cfs) plus 21 percent of the combined daily flow above 330 cfs at the Arcadia, Horse Creek and Joshua Creek gauges for the previous day for the previous day	combined flow is above 330 cfs

c. However, in lieu of Special Condition #7C, in no case shall the diversion amount exceed the difference between the previous day combined daily flow at the Arcadia, Horse Creek and Joshua Creek gauges and 90 cfs.

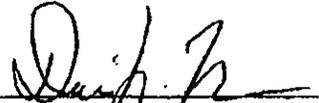
20. The expiration date for Executive Director Order No. SWF 07-045 is hereby extended to April 19, 2008, unless rescinded or further extended by Governing Board or Executive Director action on or before that date.

21. In lieu of a formal letter, the AUTHORITY may use an e-mail communication to [Lois.Sorensen@swfwmd.state.fl.us](mailto:Lois.Sorensen@swfwmd.state.fl.us) as a means of requesting any additional extension or other modification to this Order.

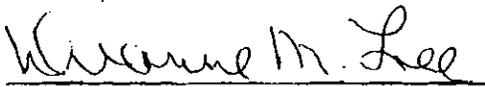
22. Except as provided in paragraphs 19. through 21., above, all other terms and conditions of Executive Director Order No. SWF 07-045 shall remain in full force and effect.

DONE AND ORDERED in Hernando County, Florida, as of October 31, 2007.

Southwest Florida Water  
Management District

By:   
David L. Moofe  
Executive Director 10-31-07

Filed this 31st day  
of October, 2007.

  
Agency Clerk

(SEAL)

## NOTICE OF RIGHTS

Persons to whom this Executive Director Order is directed, or whose substantial interests are affected, may request pursuant to subsection 373.119(3), Florida Statutes (F.S.), to petition for an administrative hearing in accordance with Sections 120.569 and 120.57, F.S., and Chapter 28-106, Florida Administrative Code (F.A.C.). A request for a hearing must: 1) explain how the petitioner's or other person's substantial interests will be affected by the District's action; 2) state all material facts disputed by the petitioner or other person, or state that there are no disputed facts; and 3) otherwise comply with Chapter 28-106, F.A.C.

A request for hearing must be filed with and received by the Agency Clerk of the District at District Headquarters, 2379 Broad Street, Brooksville, Florida 34604-6899 within twenty-one (21) days of receipt of this notice. Receipt is deemed to be the fifth day after the date on which this notice is deposited in the United States mail. Failure to file a request for hearing within this time period shall constitute a waiver of any right you or any other person may have to request a hearing under Sections 120.569 and 120.57, F.S.

Mediation pursuant to Section 120.573, F.S., and Rule 28-106.111, F.A.C., to settle an administrative dispute regarding the District's action in this matter is not available prior to the filing of a request for hearing.

In accordance with subsection 120.569(1), F.S., the following additional administrative or judicial review may be available.

A party who is adversely affected by final agency action may seek review of the action in the appropriate District Court of Appeal pursuant to Section 120.68, F.S., by filing a Notice of Appeal pursuant to Rule 9.110, Florida Rules of Appellate Procedure, within thirty (30) days after the rendering of the final action by the District.

**PURSUANT TO SUBSECTION 373.119(3), F.S., AND NOTWITHSTANDING ANY OTHER PROVISION UNDER CHAPTER 120, F.S., PERSONS TO WHOM THE ORDER IS DIRECTED SHALL COMPLY THEREWITH IMMEDIATELY, AND THE TIMELY FILING OF A PETITION SHALL NOT STAY SUCH PERSON'S OBLIGATION TO MAINTAIN SUCH COMPLIANCE DURING THE PENDENCY OF ANY ADMINISTRATIVE PROCEEDING.**

SOUTHWEST FLORIDA WATER MANAGEMENT DISTRICT

IN RE:

DECLARATION OF WATER SHORTAGE

---

FOURTH BOARD ORDER  
MODIFYING WATER SHORTAGE ORDER No. SWF 07-02

The Governing Board of the Southwest Florida Water Management District (District), during a public hearing held on June 24, 2008 in Brooksville, Florida, received testimony, including data and recommendations from District staff, and comment from the public regarding the existence of an ongoing water shortage within the District. Based upon the testimony, data, staff recommendations and public comment, the Governing Board makes the following Findings of Fact and Conclusions of Law.

**FINDINGS OF FACT**

1. At its November 30, 2006 meeting, pursuant to Section 373.083(5), Florida Statutes (F.S.), the District's Governing Board authorized the Executive Director to declare a water shortage in accordance with the non-emergency provisions of 40D-21, Florida Administrative Code (F.A.C.), the District's Water Shortage Plan ("Plan"), if, in his judgment, it was appropriate to do so prior to the Governing Board meeting on January 30, 2007.
2. The Executive Director held a public hearing on January 9, 2007 at the District's Brooksville headquarters for the purpose of considering data, including quantitative and qualitative indicators, staff recommendations and public input. Upon careful consideration of this information, the Executive Director determined that a District-wide modified Phase II "Severe Water Shortage" declaration is necessary and should be ordered prior to the next regularly scheduled Governing Board meeting.
3. The Governing Board concurred with the Executive Director's decision to issue Water Shortage Order No. SWF 07-02 during its meeting on January 30, 2007. Furthermore, on July 31, 2007, September 25, 2007, and November 26, 2007, the Governing Board considered then-current data, staff recommendations and public input. Upon careful consideration of updated information, the Governing Board determined that a modification to extend the expiration date of this Order was necessary on each of these three occasions. The most recent modification extended the terms of this Order to June 30, 2008.

4. The Plan specifies that the District will monitor certain sources of national predictions, indices and conditions and current hydrologic data, including rainfall, stream flow, groundwater levels and certain sources of national predictions and conditions.

5. The Plan establishes Drought Condition Levels that relate the extent to which current rainfall, stream flows and groundwater levels are below normal levels. Drought Condition Levels include Moderately, Severely, Extremely and Critically Abnormal. Drought Condition Levels consider regional conditions, and national predictions, indices and conditions (individually "Drought Indicator", collectively "Drought Indicators").

6. Drought Indicators are summarized as follows:

**a. Rainfall**

i. As of May 31, 2008, the District-wide rainfall deficit, measured as a twelve-month moving sum, is about 6.1 inches. This deficit is categorized as Moderately Abnormal.

ii. Eight of the sixteen counties within the District are currently experiencing below-normal rainfall on a countywide average basis.

iii. Two counties are predominantly experiencing rainfall conditions categorized as Extremely Abnormal: Hardee and Sarasota.

**b. Groundwater conditions**

i. As of June 3, 2008, all three of the major groundwater regions of the District (i.e., northern, central and southern counties) are experiencing conditions categorized as Moderately Abnormal

**c. Surface water conditions**

i. One major river within the District is experiencing substantially below-normal conditions as defined by the Plan.

ii. As of May 29, 2008, the eight-week moving mean stream flow for the Withlacoochee River (as measured near Holder) is 132 cubic feet per second (cfs), which equates to the 16<sup>th</sup> percentile, so this flow is categorized as Severely Abnormal.

iii. Although not currently classified as abnormal based the eight-week moving mean stream flow, the other three major rivers within the District have experienced an overall downward trend for four or more weeks.

iv. As of June 4, 2008, instantaneous stream flow for the Peace River (as measured at Arcadia) is 20 cfs, compared to a median historical value for this day of 206 cfs.

v. As of June 4, 2008, instantaneous stream flow for the Hillsborough River (as measured at Zephyrhills) is 53 cfs, compared to a median historical value for this day of 81 cfs.

vi. As of June 4, 2008, instantaneous stream flow for the Alafia River (as measured at Lithia) is 35 cfs, compared to a median historical value for this day of 92 cfs.

**d. The U.S. Drought Monitor**

i. The U.S. Drought Monitor is one of the national Drought Indicators specified in the Plan.

ii. As of May 27, 2008, the Monitor indicates that fourteen of the District's sixteen counties are experiencing abnormal conditions as defined by the Plan.

iii. The following counties are the most affected, experiencing conditions characterized as Severely Abnormal: Charlotte, DeSoto, Hardee, Highlands, Manatee and Sarasota.

**e. The Long-Term Palmer Index**

i. The Long Term Palmer Index is another national Drought Indicator specified in the Plan.

ii. As of May 31, 2008, this index indicates that all of the District's sixteen counties are experiencing abnormal conditions as defined by the Plan.

iii. The following counties are the most affected, experiencing conditions characterized as Severely Abnormal: Charlotte, DeSoto, Hardee, Highlands, Hillsborough, Manatee, Pinellas, Polk and Sarasota.

7. The Plan specifies that the Drought Indicators described in paragraph 4. above and Drought Condition Levels are factors to be considered in determining whether a water shortage declaration is warranted. As described above, the Drought Indicators demonstrate that all sixteen counties within the District are experiencing a composite Drought Conditions Level consistent with a declaration of at least a Phase II "Severe Water Shortage" Order.

8. While lake levels are not included in the Plan as a Drought Indicator, the Plan specifies that lake levels, as part of the water resource data collected by the District,

shall be considered in determining whether a water shortage should be declared. Data used to prepare the May 2008 Hydrologic Conditions Report indicate:

- a. Lakes in the northern region are about 4.11 feet below the bottom of the normal range.
- b. Lakes in the Tampa Bay region are about 2.05 feet below the bottom of the normal range.
- c. Lakes in the Polk Uplands region are about 2.23 feet below the bottom of the normal range.
- d. Lakes in the Lake Wales Ridge region are about 5.58 feet below the bottom of the normal range.

9. In addition to evaluating and analyzing quantifiable Drought Indicators to determine the degree to which geographic area(s) and water source(s) are affected by a water shortage, the Plan specifies that District shall take into account several qualitative factors when considering what Phase of restrictions and other response mechanisms should be declared. Pertinent factors at this time include:

- a. Surface water-dependent public supply systems serving the City of Tampa, Tampa Bay Water's member governments and the Peace River Manasota Regional Water Supply Authority's customer governments were significantly affected by this water shortage prior to its impact reaching regional proportions and, after experiencing some improvement during the wet winter months, are once again at-risk due to low storage.
- b. Tampa Bay Water's three-county Drought Mitigation Plan activation triggers have not indicated that its water supplies have returned to pre-drought conditions.
- c. The Peace River Manasota Regional Water Supply Authority continues to require two emergency authorizations to help meet current water demand. Executive Director Order No. SWF 07-045, as modified, provides a temporary permit change which allows the agency to maximize river diversions when available. Executive Director Order No. SWF 08-003 provides a temporary permit change which allows the withdrawal of ground water from ASR wells because previously-stored river water has been depleted from these wells.
- d. Local water conservation efforts by Peace River Manasota Regional Water Supply Authority's customer governments and other local governments, including enforcement of current restrictions, continue to help minimize the need for more stringent District restrictions in the southern portion of the District.

e. The District and the adjacent St. Johns River Water Management District (St. Johns) entered into an Interagency Agreement in February 2008 which allows the District to declare a water shortage in the portion of Marion County physically located in St. Johns so that all of unincorporated Marion County will follow the same water shortage restrictions at any given point in time. The District's portion of Marion County is already included in Water Shortage Order No. SWF 07-02.

f. To varying degrees, all groundwater and surface water sources throughout the District are currently affected by this water shortage event. All categories of water users are impacting the available sources and are expected to continue to impact available water supply from these sources and contribute to the potential for harm to the natural systems.

#### CONCLUSIONS OF LAW

10. The Governing Board of the District is duly authorized by Section 373.246(2), F.S., and Chapter 40D-21, F.A.C., to issue Orders declaring the existence of a water shortage within all or part of the District and to impose such restrictions and require such measures as may be necessary to reduce demand on available water supplies.

11. County and city officials and all law enforcement authorities are required to enforce orders lawfully issued by the Executive Director pursuant to the Plan and Section 373.609, F.S.

#### ORDERED

THEREFORE, based upon the foregoing Findings of Fact and Conclusions of Law, it is hereby ORDERED:

12. Water Shortage Order No. SWF 07-02 is hereby extended through September 30, 2008, unless further extended, modified or rescinded by Governing Board or Executive Director action on or before that date.

13. The portion of unincorporated Marion County located in the St. Johns River Water Management District is hereby added to the geographic area encompassed by Water Shortage Order No. SWF 07-02.

14. Except as modified herein, all other terms and conditions of Water Shortage Order No. SWF 07-02 shall remain in full force and effect.

DONE AND ORDERED in Hernando County, Florida, on this 24<sup>th</sup> day of June, 2008.

SOUTHWEST FLORIDA WATER  
MANAGEMENT DISTRICT

By: C. A. "Neil" Combee  
C. A. "Neil" Combee  
Governing Board Chair

Attest:

By: Jennifer E. Crossney  
Jennifer E. Crossney  
Governing Board Secretary

Filed this 24<sup>th</sup> day  
of June, 2008

William M. Lee  
Agency Clerk

## NOTICE OF RIGHTS

Persons to whom this Executive Director Order is directed, or whose substantial interests are affected, may request pursuant to subsection 373.119(3), Florida Statutes (F.S.), to petition for an administrative hearing in accordance with Sections 120.569 and 120.57, F.S., and Chapter 28-106, Florida Administrative Code (F.A.C.). A request for a hearing must: 1) explain how the petitioner's or other person's substantial interests will be affected by the District's action; 2) state all material facts disputed by the petitioner or other person, or state that there are no disputed facts; and 3) otherwise comply with Chapter 28-106, F.A.C.

A request for hearing must be filed with and received by the Agency Clerk of the District at District Headquarters, 2379 Broad Street, Brooksville, Florida 34604-6899 within twenty-one (21) days of receipt of this notice. Receipt is deemed to be the fifth day after the date on which this notice is deposited in the United States mail. Failure to file a request for hearing within this time period shall constitute a waiver of any right you or any other person may have to request a hearing under Sections 120.569 and 120.57, F.S.

Mediation pursuant to Section 120.573, F.S., and Rule 28-106.111, F.A.C., to settle an administrative dispute regarding the District's action in this matter is not available prior to the filing of a request for hearing.

In accordance with subsection 120.569(1), F.S., the following additional administrative or judicial review may be available.

A party who is adversely affected by final agency action may seek review of the action in the appropriate District Court of Appeal pursuant to Section 120.68, F.S., by filing a Notice of Appeal pursuant to Rule 9.110, Florida Rules of Appellate Procedure, within thirty (30) days after the rendering of the final action by the District.

**PURSUANT TO SUBSECTION 373.119(3), F.S., AND NOTWITHSTANDING ANY OTHER PROVISION UNDER CHAPTER 120, F.S., PERSONS TO WHOM THE ORDER IS DIRECTED SHALL COMPLY THEREWITH IMMEDIATELY, AND THE TIMELY FILING OF A PETITION SHALL NOT STAY SUCH PERSON'S OBLIGATION TO MAINTAIN SUCH COMPLIANCE DURING THE PENDENCY OF ANY ADMINISTRATIVE PROCEEDING.**

**Exhibit C**  
**MODIFIED PHASE II RESTRICTIONS**

Landscape Irrigation

1. Landscape irrigation shall be permitted during the hours of 12:00 a.m. to 10:00 a.m. and/or 4:00 p.m. to 11:59 p.m. on the days specified in Paragraphs 4 and 5 below.

2. Those entities utilizing 100% reclaimed and supplemented reclaimed water shall not be restricted except as to the time restriction provided by Paragraph 1.

3. Low volume irrigation, i.e., drip irrigation and microjet irrigation, shall be voluntarily reduced. Hand-watering utilizing a self-canceling nozzle of existing landscaping is allowed anytime for no more than 10 minutes per area for stress relief or to prevent plant die-off.

4. Existing Installations

A. Existing installations means any landscaping which has been planted and established for more than sixty (60) days.

B. Landscape irrigation for existing installations shall be permitted no more than two days per week.

1. Even addresses, installations with irrigation systems that irrigate both even and odd addresses within the same zones, including multi-family units and homeowners' associations, and rights-of-way or other locations with no address may accomplish necessary landscape irrigation only on Thursday and/or Sunday.

2. Odd addresses may accomplish necessary landscape irrigation only on Wednesday and/or Saturday.

5. New Installations

A. On the day the new landscaping is installed, the new landscaping may be irrigated once without regard to the normally allowable watering days and times. Irrigation of the soil immediately prior to the installation of the new landscaping is also allowable without regard to the normal allowable watering days and times.

B. The sixty day period begins the day the new landscaping is installed. The new landscaping shall be installed within a reasonable time from the date of purchase, which may be demonstrated with a dated receipt or invoice.

C. Irrigation of new landscaping which has been in place for thirty (30) days or less may be accomplished on Monday, Tuesday, Wednesday, Thursday, Saturday, and/or Sunday.

D. Irrigation of new landscaping which has been in place for thirty-one (31) to sixty (60) days may be accomplished on Monday, Wednesday, Thursday, and/or Saturday.

E. Irrigation of the new landscaping is limited to areas containing the new landscaping only. An entire zone of an irrigation system may only be utilized for landscape irrigation under this paragraph if the zone in question is for an area that contains at least 50% new landscaping. If a zone contains less than 50% new landscaping, or if the new landscaping is in an area that will not typically be irrigated by an irrigation system, only the individual new plantings are eligible for additional irrigation under this paragraph. Targeted watering may be accomplished by hand watering or any appropriate method which isolates and waters only the new landscaping.

6. Landscape irrigation systems may be operated during restricted days and times for cleaning, maintenance, and repair purposes with an attendant on site in the area being tested and/or repaired. Landscape irrigation systems may be operated for such purposes no more than once per week, and the run time should not exceed 10 minutes per zone.

7. Landscape irrigation for the purpose of watering-in fertilizers, insecticides, fungicides and herbicides, where such watering-in is required by the manufacturer, or by federal, state or local law, or best management practices, shall be allowed under the following conditions:

A. Such watering-in shall be limited to one application in the absence of specific alternative instructions from the manufacturer; and,

B. Such watering-in shall be accomplished during normally allowable watering days and times unless a professional licensed applicator has posted a temporary sign containing the date of application and the date(s) of needed watering-in activity.

## 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.