

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

Order No. 2011-042-DAO-WS

IN THE MATTER OF:

Declaration of Modified Phase I
Water Shortage Restrictions for
the Agriculture and Nursery Use
Classes Withdrawing Surface and
Groundwater within a Specified
Portion of the South Dade Water
Use Basin

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SOUTH FLORIDA
WATER MANAGEMENT DISTRICT

**DECLARATION OF WATER SHORTAGE IMPOSING MODIFIED
PHASE I RESTRICTIONS WITHIN A PORTION OF THE SOUTH
DADE WATER USE BASIN**

The Executive Director of the South Florida Water Management District ("District"), after considering recommendations of District staff and being otherwise fully apprised of the matter, issues this Order pursuant to Sections 373.083, 373.175, and 373.246, Florida Statutes, and Chapter 40E-21, Florida Administrative Code, based on the following Findings of Fact and Ultimate Facts and Conclusions of Law.

FINDINGS OF FACT

1. On March 10, 2011, the Governing Board issued Order No.: 2011-031-DAO-WS issuing a water shortage warning for all users withdrawing surface or groundwater within the geographic boundaries of the District. A copy of Order No.: 2011-031-DAO-WS is available from the District Clerk.

2. The Governing Board delegated authority to the Executive Director to modify the water shortage warning order if the District's monitoring of water conditions and water shortage plan implementation reasonably demonstrated that modification of the Board's order was warranted and necessary.

3. The sources of water affected by this Order includes surface water and groundwater, excluding the Floridan aquifer, within that portion of the South Dade Water Use Basin located in Miami-Dade County as described in Rules 40E-21.631 and 40E-21.691, Fla. Admin Code. A map depicting the area subject to this Order is attached hereto as Exhibit "A."

4. The use classes subject to this Order are the agricultural and nursery water use classes as identified in Rule 40E-21.651, Fla. Admin. Code.

5. District staff has continued to monitor the conditions of the water resources and the needs of the water users as required pursuant to Rule 40E-21.221, Fla. Admin. Code.

6. Water resources described in Water shortage Order No. 2011-031-DAO-WS has generally declined due, in part, to deficient rainfall.

7. Miami-Dade had its ninth driest October through February period on record since 1932. From October 1, 2010 through March 18, 2011, District meteorologists recorded a basin-wide average rainfall of 9.17 inches. This is only 58% of the historical average rainfall for this period. This lack of rainfall has led to a rainfall deficit of 6.69 inches.

8. Portions of Miami-Dade County, Florida remain in a D2 (severe) drought condition according to the U.S. Climate Prediction Center. Below average rainfall conditions seen in the region are expected to continue until the wet season arrives in May or June. During this period, evaporation rates will likely remain high.

9. Demands of all the water users from surface water and the Surficial aquifer within the portion of the South Dade Water Use Basin located within Miami-

Dade County are at least 100,000 acre-feet per year under average conditions, and are higher during the months of March through May.

10. As water demands and use continue to climb with the increasingly arid conditions, water levels across the District are steadily declining. The decline is exacerbated by high evaporation and transpiration rates and longer periods of wind and sunlight.

11. The Water Conservation Areas (“WCAs”) west of the Lower East Coast (“LEC”) Region are relied upon as the primary source of water to the LEC during the dry season in order to provide groundwater recharge, saltwater intrusion protection, and recharge of public drinking water wellfields. Historically, deliveries have averaged up to 500 million gallons per day during the dry season, with increased deliveries in April and May. If the freshwater levels decline, a significant potential exists for saltwater intrusion into the LEC Region’s surficial, freshwater aquifers.

12. Like the other significant water bodies throughout the District, water outflows from the WCAs to the LEC are regulated by the U.S. Army Corps of Engineers (“Corps”). The Corps’ Water Control Manual for the Water Conservation Areas and Everglades National Park sets regulatory floor elevations in the WCAs. The floor elevations identified in the regulation schedule for WCA-3 is 7.5 feet NGVD.

13. Pursuant to the WCA’s regulation schedule, once a WCA regulatory floor elevation is exceeded, water deliveries are restricted to the volume imported from secondary sources. If a secondary source is not available when a WCA level falls below the regulatory floor elevation, then water supply deliveries to the coastal areas

cannot be made from that WCA, unless the Corps approves a temporary deviation from the regulation schedule.

14. Lake Okeechobee has historically provided back-up water supplies to the Lower East Coast when WCA water storage is depleted. However, the water level in Lake Okeechobee is within the water shortage management zone of the Lake Okeechobee regulation schedule. Water shortage restrictions have been imposed pursuant to Order No.: 2011-038-DAO-WS and water supply deliveries have been reduced. Therefore, water supply deliveries from Lake Okeechobee are not available to deliver to the WCAs.

15. As of March 21, 2011, water levels in WCA-3A marsh measured 8.76 feet NGVD, only 1.26 feet above the floor elevation. The level in the canal in WCA-3A was 7.85 feet NGVD, as measured on the headwater side of S-333, only 0.35 feet above the floor elevation.

16. WCA-3 stage projections indicate a significant chance that levels will remain relatively low into July. Given La Niña weather conditions, the District's position analyses project that there is more than a 50% chance that WCA-3 will remain below floor of 7.5 feet NGVD by mid-June. If WCA-3 experiences persistent dry hydrologic conditions, which are experienced 25% of the time, then water levels could decline to floor level (7.5 feet NGVD) or even below by the first week of April.

17. Given that the District has been limited in its ability to make water supply deliveries to the coast given the rate of decline set by the U.S. Fish and Wildlife Service Biological Opinion for WCA-3A, freshwater levels have declined. This has limited the amount of recharge the District has been able to provide to the regional system.

18. As of March 14, 2011, the water level of the C-111 Canal, a canal that flows north to south located to the east of the Everglades National Park was 2.55 feet NGVD on the headwater side of the S-177 structure. At the headwater side of the S-18C structure, the C-111 had a water elevation of 1.80 feet NGVD. On the headwater side of the S-176 structure located on the L-31N/C-111 Canal, the water elevation was 3.14 feet NGVD. District staff has determined that these are critically low levels.

19. The U.S. Geological Survey (“USGS”) maintains a network of monitoring wells within the South Dade Water Use Basin. As of March 18, 2011, the water levels in the United States Geological Survey (“USGS”) monitor well G-3356 for the Surficial aquifer in South Dade measured 1.39 feet NGVD. USGS monitor well G-1183 for the Surficial aquifer near Homestead measured 1.50 feet NGVD.

20. The District has defined the freshwater mound as the groundwater divide greater than one foot higher than the average elevation of the saline water source existing between the withdrawal point and the saline water source. The freshwater mound in South Dade and Homestead has been determined to be 1.75 feet NGVD. The current water levels are insufficient to maintain a freshwater mound in the Surficial aquifer to protect against saltwater intrusion.

21. Most of the monitoring wells within the area affected by this Order reflect water levels in the lowest 10th to 30th percentile for their respective periods of record. Several wells are within 1 foot of record low water levels.

22. A number of minimum flows and levels (“MFLs”) have been established across the District. Pursuant to Rule 40E-8.221, Fla. Admin. Code, minimum water

levels have been established for the Biscayne aquifer and peat-forming and marl-forming wetlands within the Everglades.

23. Pursuant to Rule 40E-8.221(3)(b), Fla. Admin. Code, water levels within marl-forming wetlands located east and west of Shark River Slough, the Rocky Glades, and Taylor Slough within the Everglades National Park shall not fall 1.5 feet below the ground surface, as measured at a key gauge, for one or more days during a period in which the water level has remained below ground for a minimum of 90 days.

24. As of March 21, 2011, one of the District's Everglades MFL monitoring gauges, identified as G-3273, maintained a water level of 3.9 feet NGVD. Results from this gauge location indicate that the MFL for marl-forming wetlands located within eastern Everglades National Park has been exceeded. Additionally, Everglades MFL monitoring gauges identified as NP201, and NER62 (as measured at G-3576) maintained a water level of 6.1 and 5.0 feet NGVD, respectively. Results from these gauge locations indicate that the MFL for peat-forming wetlands located within Everglades National Park will most likely be exceeded if conditions persist.

25. In light of the above factors, District staff has reviewed the current conditions of the water resources, the present and anticipated demands, and the present and anticipated water supply. Given the downward trend in water level readings, the imposition of water shortage restrictions on agriculture and nursery uses is necessary to avoid serious harm and equitably distribute available supplies.

ULTIMATE FACTS AND CONCLUSIONS OF LAW

26. The Governing Board has authority to adopt a water shortage plan to regulate the withdrawal and use of water and protect the water resources of the District.

§ 373.246, Fla. Stat. (2010).

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

28. The Governing Board may issue a water shortage warning calling for voluntary reductions in demand within a source prior to declaring a water shortage. Fla. Admin. Code R. 40E-21.231(3).

29. Rule 40E-21.271, Fla. Admin. Code, recognize the restrictions contained in Part V of Chapter 40E-21, Fla. Admin. Code, are general water use restrictions and also authorize the Governing Board to order any combination of restrictions in lieu of or in addition to those in Part V, Chapter 40E-21, Fla. Admin. Code.

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

31. Based on the cumulative assessment of surface and groundwater availability in the affected basins and climate forecasts, there is a significant potential that sufficient water will not be available to meet anticipated demands without mandatory restrictions on water usage within the affected Basin. The decline in surface and groundwater levels, the potential for further declines, and the present and projected water demands in the Basin, require the imposition of mandatory water shortage restrictions.

32. Considering the above Findings of Fact, it is necessary to impose restrictions in the affected Basins. The modified Phase I and restrictions identified in this Order are geared toward achieving the goal of a 15% cutback in overall demand.

ORDER

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

33. A water shortage is hereby declared and Modified Phase I restrictions are hereby imposed on all nursery and agricultural uses of surface water and groundwater within the area depicted on Exhibit "A."

34. Agricultural and nursery users shall be subject to the restrictions set forth in Exhibit "B."

35. Permitted water users are requested 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.

36. A user may request relief from this Order by filing an application for variance in accordance with Rule 40E-21.275, Fla. Admin. Code, but must conform to the water use restrictions until the Executive Director grants a temporary variance or the Governing Board grants a variance.

37. Any variance granted from this Order shall expire upon a declaration by the Governing Board that a water shortage in the affected areas no longer exists, rescinds this Order, or when a more restrictive water declaration is made in the affected areas (unless otherwise provided in such water shortage declaration).

38. This Order imposing Modified Phase I Moderate Water Shortage Restrictions shall become effective on March 26, 2011 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.

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

DONE AND SO ORDERED in West Palm Beach, Florida, on this 21 day of March 2011.



SOUTH FLORIDA WATER
MANAGEMENT DISTRICT
By its Executive Director


CAROL ANN WEHLE

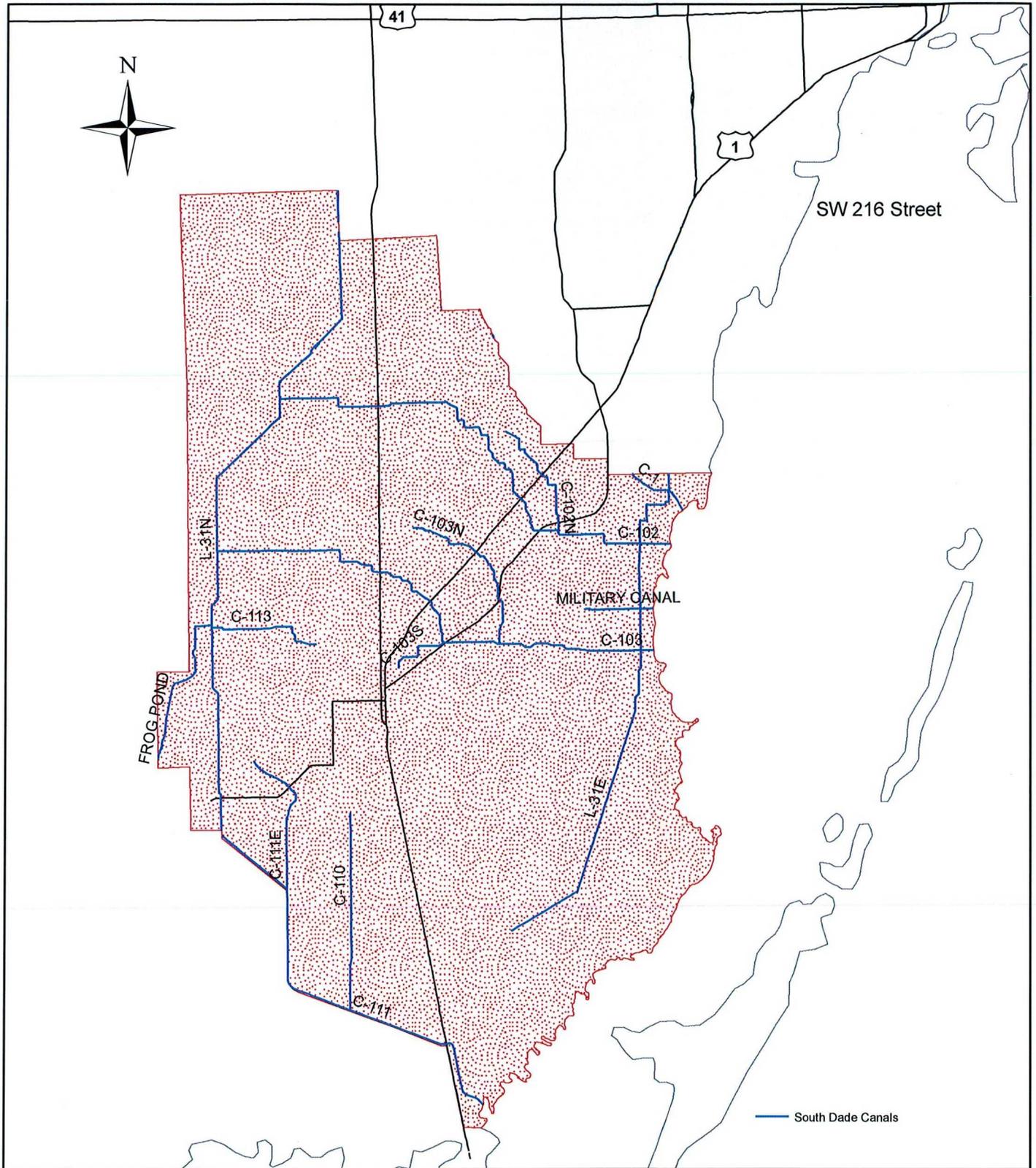
Attest:


District Clerk/Assistant Secretary
March 21, 2011

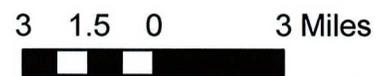
Legal Form Approved:


Jennifer Bokankowitz, Esq.

South Dade Water Use Basin Modified Phase I Restrictions



- South Dade Water Use Basin All
- Florida
- South Dade Canals
- Major Roads



Created 3/21/11

EXHIBIT A

MODIFIED PHASE I RESTRICTIONS

1. Agricultural Use

a. The hours for center pivot and low volume irrigation, such as drip and microjet irrigation, are not restricted.

b. Overhead irrigation:

i. Overhead irrigation is prohibited from 10:00 a.m. to 2:00 p.m.

ii. Overhead irrigation for field grown citrus nursery stock moisture stress reduction shall be allowed daily for 10 minutes per irrigation zone from 11:30 a.m. to 12:00 p.m. and 1:30 p.m. to 2:00 p.m.

iii. Overhead irrigation for newly planted fields of boniato moisture stress reduction shall be allowed daily up to 15 minutes per irrigation zone from 10:00 a.m. to 2:00 p.m. Irrigation for moisture stress reduction is allowed for up to 10 days after planting.

c. All irrigation systems shall be operated in a manner that will maximize the percentage of water withdrawn and held which is placed in the root zone of the crop and will minimize the amount of water withdrawn and released or lost to the users but is not immediately available for other users.

d. Users having access to more than one source class shall maximize the user of the lesser or least restricted source class.

e. Agricultural water conservation best management practices are encouraged to be implemented, including, but not limited to, developing irrigation schedules using real-time weather data and soil moisture probes and irrigate only when soil moisture levels indicate need, developing alternative water supply sources, and

ensuring the irrigation system is operating with maximum efficiency by implementing a Mobile Irrigation Laboratory evaluation. For a comprehensive list of agricultural water conservation measures, see the Florida Agricultural Water Conservation Best Management Practices Manual produced by Florida Department of Agriculture and Consumer Services, available at www.floridaagwaterpolicy.com/PDF/Bmps/Bmp_AgWaterConservation2006.pdf.

- f. Livestock Use – Livestock water use shall be voluntarily reduced.
- g. Aquaculture Use - Aquacultural water use shall be voluntarily reduced.
- h. Soil Flooding – Soil flooding for vegetable seed planting, rice planting, burning of sugarcane prior to harvest, and to permit harvesting of sod harvesting shall be voluntarily reduced. Soil flooding for all other purposes is prohibited.
- i. Freeze Protection – Water use for freeze protection shall be restricted to situations in which official weather forecasting services predict temperature likely to cause permanent damage to crops.

2. Nursery

- a. Low volume irrigation, such as drip and microjet, and low volume hand-watering shall be voluntarily reduced.
- b. No irrigation is permitted on days when there has been sufficient rainfall. Users shall install a rain switch or other similar device to determine when there has been sufficient rainfall.
- c. Overhead irrigation shall be performed as follows:
 - i. Irrigation occurring inside (i.e., in shade houses or under covered structures) shall be conducted from 7:00 a.m. to 7:00 p.m.;

ii. Irrigation occurring outside shall be conducted as follows:

1. Irrigation by those users which 1) are currently employing best management practices; and, 2) have registered with the Florida Department of Agriculture and Consumer Services, shall be voluntarily reduced.

2. Irrigation by those users which 1) are not currently employing best management practices; and, 2) have not registered with the Florida Department of Agriculture and Consumer Services, is prohibited from 7:00 a.m. to 7:00 p.m.

d. External propagation bench misting shall be limited to 10 minutes per bench zone during daylight hours.

e. Stress reduction for containerized nursery stock is permitted from 10:00 a.m. to 4:00 p.m. for 10 minutes per irrigation zone.

f. Flood irrigation systems are restricted to 8 days per month.

NOTICE OF RIGHTS

As required by Sections 120.569(1), and 120.60(3), Fla. Stat., following is notice of the opportunities which may be available for administrative hearing or judicial review when the substantial interests of a party are determined by an agency. Please note that this Notice of Rights is not intended to provide legal advice. Not all the legal proceedings detailed below may be an applicable or appropriate remedy. You may wish to consult an attorney regarding your legal rights.

RIGHT TO REQUEST ADMINISTRATIVE HEARING

A person whose substantial interests are or may be affected by the South Florida Water Management District's (SFWMD or District) action has the right to request an administrative hearing on that action pursuant to Sections 120.569 and 120.57, Fla. Stat. Persons seeking a hearing on a District decision which does or may determine their substantial interests shall file a petition for hearing with the District Clerk within 21 days of receipt of written notice of the decision, unless one of the following shorter time periods apply: 1) within 14 days of the notice of consolidated intent to grant or deny concurrently reviewed applications for environmental resource permits and use of sovereign submerged lands pursuant to Section 373.427, Fla. Stat.; or 2) within 14 days of service of an Administrative Order pursuant to Subsection 373.119(1), Fla. Stat. "Receipt of written notice of agency decision" means receipt of either written notice through mail, or electronic mail, or posting that the District has or intends to take final agency action, or publication of notice that the District has or intends to take final agency action. Any person who receives written notice of a SFWMD decision and fails to file a written request for hearing within the timeframe described above waives the right to request a hearing on that decision.

Filing Instructions

The Petition must be filed with the Office of the District Clerk of the SFWMD. Filings with the District Clerk may be made by mail, hand-delivery or facsimile. **Filings by e-mail will not be accepted.** Any person wishing to receive a clerked copy with the date and time stamped must provide an additional copy. A petition for administrative hearing is deemed filed upon receipt during normal business hours by the District Clerk at SFWMD headquarters in West Palm Beach, Florida. Any document received by the office of the SFWMD Clerk after 5:00 p.m. shall be filed as of 8:00 a.m. on the next regular business day. Additional filing instructions are as follows:

- Filings by mail must be addressed to the Office of the SFWMD Clerk, P.O. Box 24680, West Palm Beach, Florida 33416.
- Filings by hand-delivery must be delivered to the Office of the SFWMD Clerk. **Delivery of a petition to the SFWMD's security desk does not constitute filing. To ensure proper filing, it will be necessary to request the SFWMD's security officer to contact the Clerk's office.** An employee of the SFWMD's Clerk's office will receive and file the petition.
- Filings by facsimile must be transmitted to the SFWMD Clerk's Office at (561) 682-6010. Pursuant to Subsections 28-106.104(7), (8) and (9), Fla. Admin. Code, a party who files a document by facsimile represents that the original physically signed document will be retained by that party for the duration of that proceeding and of any subsequent appeal or subsequent proceeding in that cause. Any party who elects to file any document by facsimile shall be responsible for any delay, disruption, or interruption of the electronic signals and accepts the full risk that the document may not be properly filed with the clerk as a result. The filing date for a document filed by facsimile shall be the date the SFWMD Clerk receives the complete document.

Initiation of an Administrative Hearing

Pursuant to Rules 28-106.201 and 28-106.301, Fla. Admin. Code, initiation of an administrative hearing shall be made by written petition to the SFWMD in legible form and on 8 and 1/2 by 11 inch white paper. All petitions shall contain:

1. Identification of the action being contested, including the permit number, application number, District file number or any other SFWMD identification number, if known.
2. The name, address and telephone number of the petitioner and petitioner's representative, if any.
3. An explanation of how the petitioner's substantial interests will be affected by the agency determination.
4. A statement of when and how the petitioner received notice of the SFWMD's decision.
5. A statement of all disputed issues of material fact. If there are none, the petition must so indicate.
6. A concise statement of the ultimate facts alleged, including the specific facts the petitioner contends warrant reversal or modification of the SFWMD's proposed action.
7. A statement of the specific rules or statutes the petitioner contends require reversal or modification of the SFWMD's proposed action.
8. If disputed issues of material fact exist, the statement must also include an explanation of how the alleged facts relate to the specific rules or statutes.
9. A statement of the relief sought by the petitioner, stating precisely the action the petitioner wishes the SFWMD to take with respect to the SFWMD's proposed action.

A person may file a request for an extension of time for filing a petition. The SFWMD may, for good cause, grant the request. Requests for extension of time must be filed with the SFWMD prior to the deadline for filing a petition for hearing. Such requests for extension shall contain a certificate that the moving party has consulted with all other parties concerning the extension and that the SFWMD and any other parties agree to or oppose the extension. A timely request for extension of time shall toll the running of the time period for filing a petition until the request is acted upon.

If the District takes action with substantially different impacts on water resources from the notice of intended agency decision, the persons who may be substantially affected shall have an additional point of entry pursuant to Rule 28-106.111, Fla. Admin. Code, unless otherwise provided by law.

Mediation

The procedures for pursuing mediation are set forth in Section 120.573, Fla. Stat., and Rules 28-106.111 and 28-106.401-.405, Fla. Admin. Code. The SFWMD is not proposing mediation for this agency action under Section 120.573, Fla. Stat., at this time.

RIGHT TO SEEK JUDICIAL REVIEW

Pursuant to Sections 120.60(3) and 120.68, Fla. Stat., a party who is adversely affected by final SFWMD action may seek judicial review of the SFWMD's final decision by filing a notice of appeal pursuant to Florida Rule of Appellate Procedure 9.110 in the Fourth District Court of Appeal or in the appellate district where a party resides and filing a second copy of the notice with the SFWMD Clerk within 30 days of rendering of the final SFWMD action.