

**BEFORE THE GOVERNING BOARD OF THE
SOUTH FLORIDA WATER MANAGEMENT DISTRICT**

ORDER NO. SFWMD ___-2007

IN THE MATTER OF:

**APPROVAL OF
2005-2006 UPDATE TO THE
LOWER EAST COAST
WATER SUPPLY PLAN**

_____ /

**FINAL ORDER ON 2005-2006 UPDATE TO THE LOWER EAST COAST
WATER SUPPLY PLAN**

This matter, having come before the Governing Board of the South Florida Water Management District ("SFWMD"), at its regular meeting of January 15, 2007, for entry of a Final Order, upon hearing staff's presentation, and being otherwise fully informed, the Governing Board issues this Final Order containing the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. In May 2000, the Governing Board of the SFWMD approved the Lower East Coast Regional Water Supply Plan, 2000 – 2020 (" Plan").
2. In 2005, the Florida Legislature revised Chapter 373, F.S., to require the inclusion of specific water resource development and water supply development projects in regional water supply plans.

3. The District's development of the 2005-2006 Update to the Lower East Coast Water Supply Plan (LEC UPDATE") pursuant to Section 373.0361, F.S., was initiated in June 2004. The LEC UPDATE supersedes and replaces the LEC Plan previously approved.

4. The LEC planning area encompasses essentially all of Miami-Dade, Broward, and Palm Beach counties, most of Monroe County, and the eastern portions of Hendry and Collier counties. Additionally, the entire Lake Okeechobee Service Area, which also includes portions of Martin, Okeechobee, Glades, and Lee counties, was included in the water supply planning analyses due to its reliance on Lake Okeechobee for water supply.

5. The purpose of this planning effort is to update the LEC Plan approved in 2000 to comply with the amendments to Chapter 373, F.S., and to establish a framework for future District actions to meet the water supply and associated natural resource protection requirements of Chapter 373, F.S. The LEC UPDATE takes into account cumulative impacts on water resources and guides future management of those resources to ensure adequate water supply for existing and projected reasonable-beneficial uses and to sustain the water resources and related natural systems through the year 2025.

6. The LEC UPDATE is based on a 20-year planning period and includes: (1) a water supply development component, (2) a water resource development component, (3) a strategy related to minimum flows and levels, (4) a funding strategy, (5) consideration of how the water supply and resource development components serve

the public interest or save costs, (6) technical data, and (7) minimum flows and levels established and proposed for establishment within the region.

7. The LEC region is expected to experience substantial shift in land use and growth between now and the year 2025. Population is expected to increase from approximately 5.6 million people in 2005 to approximately 7.3 million by 2025 and will create additional urban water demands.

8. Overall, the LEC UPDATE concludes that, with appropriate management and diversification of water supply sources, there is sufficient water to meet the needs of this region during a 1-in-10 year drought condition through 2025.

9. The LEC UPDATE includes recommendations for water resource development projects and specific water supply development projects from which local water users may choose. The LEC UPDATE contains recommendations and implementation strategies regarding these potential solutions.

10. Development of the LEC UPDATE occurred in conjunction with an open public participation effort with District Governing Board leadership provided by Irela Bagué. Specifically, public participation was facilitated through the District's Water Resource Advisory Commission ("WRAC"). The WRAC was established by the Governing Board as an advisory body to the Governing Board to provide a forum for improving public participation and decision-making on water resource issues affecting south Florida. Membership of the WRAC includes representatives of federal, state, and local governments and agencies; public water supply utilities; local business interests; environmental concerns; community leadership; and agricultural interests. The SFWMD held thirteen LEC UPDATE WRAC Regional Workshops in the planning area from June

2004 through November 2006. The primary role of the WRAC Regional Workshops was to receive public input at each stage of the planning process, contribute local knowledge and expertise, as well as to reflect the collective concerns of the various stakeholders in the planning region.

11. Implementation of the LEC UPDATE will occur through a variety of future Governing Board actions. A flexible “course of action” is proposed; however, future decisions concerning contracts, research, budgetary appropriations, cost-sharing arrangements, rulemaking, operational protocol, local agreements, inter-governmental coordination and study efforts will commit the District to a specific direction. When such final decisions are made, affected persons will be offered appropriate public input opportunities and rights.

12. The LEC UPDATE is not a self-executing document. It is not intended to affect the substantial interest of a party. Future Governing Board action will be required to implement the LEC UPDATE. When implementing action is taken, the Governing Board shall offer an appropriate point of entry to substantially affected parties, including Section 120.569, F.S., rights. Issues regarding underlying analyses, findings, conclusions or any other portions of the LEC UPDATE relied upon to support a future Governing Board action may also be raised in challenges of such action.

13. The LEC UPDATE dated February 2007 is attached as Exhibit A and is incorporated into this Order. Staff has advised the Governing Board that interested parties may provide staff with outstanding, minor comments associated with Exhibit A. The Governing Board directed staff to address such minor comments prior to finalization of this Order. Further, this planning document may be amended or updated as

appropriate in light of new technical information and analysis. Updates are required to occur at no later than at five year intervals.

14. Notice of this Final Agency Action will be distributed by certified mail to persons who have participated in plan development process. Additional notice will be published in the *Florida Administrative Weekly* and newspapers of general circulation within the planning region.

15. Notice of this Final Agency Action also will be distributed by certified mail to each entity identified in the LEC Update responsible to implement a project, in accordance with section 373.0361 (7)(a), F.S.

CONCLUSIONS OF LAW

16. Section 373.0361, Fla. Stat., adopted in 1997, authorizes the governing boards of the water management districts to undertake regional water supply planning efforts, including the updating of existing plans such as the LEC UPDATE. Section 373.0361, Fla. Stat., also establishes a framework for the regional water supply plan's scope, analysis, implementation, and process.

17. The Governing Board concludes that the LEC UPDATE meets the requirements of Section 373.0361, F.S.

18. Sub-section 373.0361(4), Fla. Stat., establishes the opportunity for administrative review of District approval of a regional water supply plan. This provision states:

Governing board approval of a regional water supply plan shall not be subject to the rulemaking requirements of Chapter 120.

However, any portion of an approved regional water supply plan which affects the substantial interests of a party shall be subject to s. 120.569. (Emphasis added.)

Section 120.569, Fla. Stat., details the legal provisions that apply in all proceedings in which the substantial interests of a party are determined by an agency. The Notice of Rights included in this Order describes these and other potential remedies which may exist. However, the Notice of Rights shall not cover actions taken by the Governing Board in the future to implement the LEC UPDATE. When implementing action is taken, the Governing Board shall offer an appropriate point of entry to substantially affected parties. To the extent the LEC UPDATE or anything in the LEC UPDATE is relied upon to support a future Governing Board action, a challenge to the implementation action may also challenge the supporting material contained in the LEC UPDATE.

19. The LEC UPDATE may be updated or amended as new technical information and analysis becomes available. Updates shall occur in accordance with Section 373.0361, F.S., at intervals no later than five years from the date of entry of this order.

20. The Governing Board authorizes staff to make minor changes to the LEC UPDATE which do not alter the substance of the LEC UPDATE, in response to comments submitted to staff.

ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, it is hereby

ORDERED:

1. The 2005-2006 Update to the Lower East Coast Water Supply Plan, 2000 – 2025 is hereby approved in accordance with section 373.0361, Fla. Stat.

2. Staff is authorized to make changes to the LEC UPDATE, which do not alter the substance of the LEC UPDATE, in response to comments submitted to staff. Such changes must occur prior to rendering of this Final Order and no later than 30 days after the February 15, 2007 Governing Board meeting.

3. Staff is authorized to distribute notice of this Final Agency Action by certified mail to persons who have participated in plan development process as well as those entities identified as appropriate for implementing water supply development project options. Additional notice shall be published in the *Florida Administrative Weekly* and newspapers of general circulation within the planning region.

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 and/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, 120.57, and 120.60(3), 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 in accordance with Rule 28-106.111, Fla. Admin. Code. Any person who receives written notice of a District decision and fails to file a written request for hearing within 21 days waives the right to request a hearing on that decision as provided by Subsection 28-106.111(4), Fla. Admin. Code.

The Petition must be filed at the Office of the District Clerk of the SFWMD, 3301 Gun Club Road, P.O. Box 24680, West Palm Beach, Florida, 33416, and must comply with the

requirements of Rule 28-106.104, Fla. Admin. Code. Filings with the District Clerk may be made by mail, hand-delivery or facsimile. **Filings by e-mail will not be accepted.** 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. Pursuant to Rule 28-106.104, Fla. Admin. Code, any document received by the office of the District Clerk after 5:00 p.m. shall be filed as of 8:00 a.m. on the next regular business day.

- Filings made by mail must include the original and one copy and must be addressed to the Office of the District Clerk, P.O. Box 24680, West Palm Beach, Florida 33416.
- Filings by hand-delivery must also include the original and one copy of the petition. **Delivery of a petition to the District's security desk does not constitute filing. To ensure proper filing, it will be necessary to request the District's security officer to contact the Clerk's office.** An employee of the District's Clerk's office will file the petition and return the extra copy reflecting the date and time of filing.
- Filings by facsimile must be transmitted to the District 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 District Clerk receives the complete document.

The following provisions may be applicable to SFWMD actions in combination with the applicable Uniform Rules of Procedure (Subsections 40E-0.109(1)(a) and 40E-1.511(1)(a), Fla. Admin. Code):

- (1)(a) "Receipt of written notice of agency decision" as set forth in Rule 28-106.111, Fla. Admin. Code, means receipt of either written notice through 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.
- (b) If notice is published pursuant to Chapter 40E-1, F.A.C., publication shall constitute constructive notice to all persons. Until notice is published, the point of entry to request a formal or informal administrative proceeding shall remain open unless actual notice is received.
- (2) If the District's Governing Board takes action which substantially differs 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. The District Governing Board's action is considered to substantially differ from the notice of intended agency decision when the potential impact on water resources has changed.
- (3) Notwithstanding the timeline in Rule 28-106.111, Fla. Admin. Code, intended agency decisions or agency decisions regarding consolidated applications for Environmental Resource Permits and Use of Sovereign Submerged Lands pursuant to Section 373.427, Fla. Stat., shall provide a 14 day point of entry to file petitions for administrative hearing.

Hearings Involving Disputed Issues of Material Fact

The procedure for hearings involving disputed issues of material fact is set forth in Subsection 120.57(1), Fla. Stat., and Rules 28-106.201-.217, Fla. Admin. Code. Petitions involving disputed issues of material fact shall be filed in accordance with Rule 28-106.104, Fla. Admin. Code, and must comply with the requirements set forth in Rule 28-106.201, Fla. Admin. Code.

Hearings Not Involving Disputed Issues of Material Fact

The procedure for hearings not involving disputed issues of material fact is set forth in Subsection 120.57(2), Fla. Stat., and Rules 28-106.301-.307, Fla. Admin. Code. Petitions not involving disputed issues of material fact shall be filed in accordance with Rule 28-106.104, Fla. Admin. Code, and must comply with the requirements set forth in Rule 28-106.301, Fla. Admin. Code.

Mediation

As an alternative remedy under Sections 120.569 and 120.57, Fla. Stat., any person whose substantial interests are or may be affected by the SFWMD's action may choose to pursue 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. Choosing mediation will not adversely affect the rights to a hearing if mediation does not result in a settlement.

DISTRICT COURT OF APPEAL

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.

DONE AND SO ORDERED this 15th day of February, 2007, at a public meeting held at 3301 Gun Club Road, West Palm Beach, FL 33406.

SOUTH FLORIDA WATER MANAGEMENT
DISTRICT BY ITS GOVERNING BOARD

BY: _____
Kevin McCarty, Chair

LEGAL FORM APPROVED
SFWMD OFFICE OF COUNSEL

BY: _____ DATE: _____

(Corporate Seal)

ATTEST:

Secretary

Date: _____