

BEFORE THE GOVERNING BOARD OF THE
SOUTH FLORIDA WATER MANAGEMENT DISTRICT

Order No.: 2011-____-DAO-WU

IN THE MATTER OF:

Approval of the 2011
Upper East Coast Water
Supply Plan Update

**FINAL ORDER APPROVING THE 2011 UPPER EASTCOAST WATER
SUPPLY PLAN UPDATE**

The Governing Board of the South Florida Water Management District (“District”), after considering recommendations of District staff and being otherwise fully apprised of the matter, issues this Final Order pursuant to Section 373.036, 373.083, and 373.709 Florida Statutes, based on the following Findings of Fact and Ultimate Facts and Conclusions of Law.

FINDINGS OF FACT

1. The Upper East Coast (“UEC”) is one of four regional planning areas in the District. The planning area covers approximately 1,200 square miles and includes most of Martin and St. Lucie Counties and a small portion of Okeechobee County

2. In 1998, the District’s Governing Board approved the Upper East Coast Water Supply Plan (“UEC Plan”). The Governing Board subsequently updated the UEC Plan in 2004 and amended the UEC Plan in 2006.

3. The purpose of this effort is to update the UEC Plan approved in 2006 to establish a framework for future District actions to meet the water supply and associated natural resource protection requirements of Chapter 373, Fla. Stat.

4. The UEC 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 associated prevention and recovery strategies.

5. The UEC 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 2030.

6. The UEC region is expected to experience population growth, increasing from 382,324 people in 2005 to approximately 791,861 by 2030. This growth will create additional water demands for potable and irrigation water.

7. Agricultural land use, primarily located in the western portion of the UEC region, is projected to increase slightly in demand by 2030 from 2005 levels.

8. Additionally, there are numerous coastal and inland environmental resources within this region.

9. The UEC 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 2030. In addition to the recommendations in the Plan, the Comprehensive Everglades Restoration Plan and programs will maximize water resources by addressing issues of timing, retention, and freshwater flow regimes to the coastal environmental resources in the planning area and potentially increase availability of surface water for human water use.

10. The UEC Update includes recommendations for water resource development projects and specific water supply development projects. The UEC

Update contains recommendations and implementation strategies regarding these potential solutions.

11. Development of the UEC Update occurred in conjunction with an open public participation effort. Public participation was facilitated through the District's Water Resource Advisory Commission ("WRAC"). The WRAC is an advisory body to the Governing Board which provides a forum for improving public participation and decision-making on water resource issues affecting south Florida.

12. The District held four UEC Plan WRAC Regional Workshops in the planning area from December 2009 through December 2010. The primary role of the WRAC Regional Workshops was to receive public input, contribute local knowledge and expertise, and reflect the collective concerns of the various stakeholders in the planning region.

13. The UEC Update is not a self-executing document. Implementation of the UEC 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.

14. The UEC Update dated March 2011 is attached to this Order as Exhibit "A." Staff 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.

15. Further, this planning document may be updated as appropriate in light of new technical information and analysis. Such updates are required to occur at no later than at five year intervals.

CONCLUSIONS OF LAW

16. Section 373.709, Fla. Stat., 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 UEC Update.

17. Section 373.709, Fla. Stat., also establishes a framework for the regional water supply plan's scope, analysis, implementation, and process. Specific water resource development and water supply development projects must be included in regional water supply plans. Id.

18. The Governing Board concludes that the UEC Update meets the requirements of Section 373.709, Fla. Stat.

19. Section 373.709(5), 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, Fla. Stat.

20. 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 attached Notice of Rights describes the potential remedies which may exist.

21. However, the Notice of Rights shall not cover actions taken by the Governing Board in the future to implement the UEC Update. When implementing

action is taken, the Governing Board shall offer an appropriate point of entry to substantially affected parties. To the extent the UEC Update, as amended, or anything in the UEC 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 UEC Plan.

22. The UEC Update may be updated or amended as new technical information and analysis becomes available. Such updates shall occur in accordance with Section 373.709, Fla. Stat., at intervals no later than five years from the date of entry of this order.

23. The Governing Board authorizes staff to make minor changes to the UEC Update which does not alter the substance of the UEC Update, in response to comments submitted to staff.

ORDER

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

24. The 2011 Upper East Coast Water Supply Plan Update, 2005 – 2030 is hereby approved in accordance with Section 373.709, Fla. Stat.

25. District Staff is authorized to make changes to the UEC Update, which does not alter the substance of the UEC 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 March 10, 2011 Governing Board meeting.

26. District staff is authorized to distribute notice of this Order by certified mail to persons who have participated in plan development process and those entities identified as appropriate for implementing water supply development projects. Notice

shall also be published in the Florida Administrative Weekly and newspapers of general circulation within the planning region.

27. A Notice of Rights is attached as Exhibit "B."

DONE AND SO ORDERED in Ft. Pierce, Florida, on this ____ day of March, 2011.

SOUTH FLORIDA WATER
MANAGEMENT DISTRICT
By its Governing Board

CAROL ANN WEHLE
Executive Director

Attest:

Legal Form Approved:

District Clerk/Assistant Secretary
Date: March ____, 2011

Jennifer Bokankowitz, Esq.