

**SOUTH FLORIDA WATER MANAGEMENT DISTRICT
3301 Gun Club Road
West Palm Beach, Florida 33406**

IN RE: ORDER NO. SFWMD 2009- 069 DAO WU

**EMERGENCY ORDER FOR THE PURPOSE OF
IMMEDIATE WATER SUPPLY RELIEF FOR THE
CITY OF WEST PALM BEACH, FLORIDA**



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SOUTH FLORIDA
WATER MANAGEMENT DISTRICT

EMERGENCY ORDER

The Executive Director of the South Florida Water Management District ("District"), pursuant to Section 373.119(2), Florida Statutes, and Rule 40E-1.611, Florida Administrative Code, after considering the recommendations of District staff and being otherwise fully appraised of the matter, issues the following Emergency Order containing Findings of Fact, Ultimate Facts and Conclusions of Law:

FINDINGS OF FACT

I. THE PARTIES

1. The District is a public corporation of the State of Florida, existing pursuant to Chapter 25270, Laws of Florida, 1949, and operating pursuant to Chapter 373, F.S., and Title 40E, F.A.C., as a multi-purpose water management district with its principal office at 3301 Gun Club Road, West Palm Beach, Florida. The District has the power and duty to protect Florida's water resources and to administer and enforce the

provisions of Chapter 373, F.S., and the rules promulgated there under, Title 40E, F.A.C. The District has jurisdiction over the matters addressed in this Order.

2. The City of West Palm Beach (City), as authorized by District, provides drinking water to a service area of approximately 35,900 acres, including the Town of Palm Beach, Town of South Palm Beach, and unincorporated sections of Palm Beach County.

II. CITY OF WEST PALM BEACH CONSUMPTIVE USE PERMIT

3. The City received Consumptive Use Permit #50-00615-W (permit), from the District on October 12, 2006. The City has a maximum allocation not to exceed 1,339 million gallons per month (MGM) at its Clear Lake Water Treatment Plant.

4. The City primarily receives its drinking water from 8 surface water pumps at two locations on Clear Lake. Clear Lake receives discharge from the M-Canal, which is supplied by two 65,000 gallon per minute pumps at the L-8 Tieback Canal, as well as rainfall/runoff collected in the City's Water Catchment Area, which receives water from Lake Okeechobee, and flows from the City's Wellfield.

5. The conditions of the consumptive use permit authorize the City to withdraw groundwater from the Surficial Aquifer System (SAS) at the Wellfield, located adjacent to the East Central Regional Wastewater Treatment Plant on a one-to-one basis relative to the delivery of reclaimed water from the Wetlands-Based Water

Reclamation Project (WBWRP) to the Wellfield. These permit conditions were incorporated into the consumptive use permit for the purpose of protecting wetland resources and other existing legal users. The remainder of the City's water supply is withdrawn from surface water in Clear Lake which originates from the pumps at the L-8 Tieback Canal.

III. CIRCUMSTANCES SURROUNDING THE CITY OF WEST PALM BEACH'S WATER SUPPLY SOURCES

6. The City's water supply lakes have been declining sharply. For example, the lake level at Clear Lake was 12.40 feet on February 8, 2009 and declined to 11.55 feet just 20 days later on February 28, 2009. This represents a .04 feet decline per day. Without additional recharge, the City's lakes would reach levels at which further pumping would be restricted in approximately 60 days.

7. These declining water levels are attributable to dry weather conditions. So far this dry season, the City of West Palm Beach, including the Water Catchment Area, has received fairly limited rains. Rainfall over the area from November through March 17 averaged about 2.50", which is over 13" below the historical average for the period.

8. However, this area has received a recent burst of rainfall. Since the morning of March 18, 2009, it has received a welcomed 1-2 inches of rain.

9. During the remainder of the dry season, evaporation is expected to

overwhelm rainfall. Evaporation rates will be about double rainfall amounts until the onset of the wet season during late May or early June.

IV. PROPOSED TEMPORARY TEST DIVERSION AND STORAGE OF WATER FROM THE C-51 CANAL

10. The City's request is to conduct a three day test to intercept water from the C-51 Canal that would otherwise be discharged to tide through the S-155 Structure. Given the opportunity presented by the recent, significant rainfall, water is presently available for such diversion. Without the City intercepting this water, the District will release the water to tide pursuant to the S-155 Structure's operating criteria.

11. The City's objectives for this test include assessing whether: (1) meaningful water can be moved through the Boyd structure, and (2) this water can be effectively treated by the Renaissance Project.

ULTIMATE FACTS AND CONCLUSIONS OF LAW

12. Section 373.119 (2), F.S., authorizes the Executive Director of the District, in the event of an emergency requiring immediate action to protect the public health, safety or welfare, with the concurrence of the Governing Board and without prior notice, to issue an order reciting the existence of such an emergency and requiring that such action be taken as deemed necessary. Pursuant to Section 373.119(3), F.S., any

person to whom an emergency order is directed pursuant to subsection (2), shall comply therewith immediately, but on petition to the Board shall be afforded a hearing as soon as possible.

13. Rule 40E-1.611, F.A.C., states that an emergency exists when immediate action is necessary to protect, in part, public health, safety, welfare, or the health of animals and recreational or agricultural uses of land.

14. Pursuant to Section 373.119(2), F.S., and the facts described above, the Executive Director finds that an emergency exists requiring immediate action necessary to protect the public welfare.

NOW, THEREFORE BE IT ORDERED, that the Executive Director of the District, pursuant to the authority of Section 373.119(2), F.S, and Rule 40E-1.611, F.A.C., hereby issues this Emergency Authorization and Order:

AUTHORIZED EMERGENCY ACTIVITIES

15. The following limited activities are temporarily authorized and/or ordered:

The City is authorized, between March 19, 2009 and March 22, 2009, to intercept and capture a maximum of 400 acre feet per day, not to exceed 1,200 acre feet of water from the C-51 Canal. On a daily basis, the City must contact the District's Operational Control Room to confirm water availability and receive written confirmation of the same from the District. This water will be diverted via the Boyd Structure, a gravity connection to the C-51 Canal. The City shall provide the District with a summary report

documenting the quantity of water withdrawn during this test event.

16. This Order is temporary in nature and shall not relieve the City of any obligation to obtain necessary federal, state, local, or special district approvals.

17. This Order shall not be construed as a substitute for, or waiver of, any right of way, surface water management, water use, or other permits required of the City under the District's rules and regulations.

18. This Order shall not constitute waiver of the District's regulatory jurisdiction; nor be construed to authorize any activity within the jurisdiction of the District except in accordance with the express terms of this Order. In addition, it shall not be construed as relieving the City from any responsibilities, duties or liabilities it may have to other local, state, or federal agencies exercising authority over the areas covered by this Order.

19. This Order is meant to provide authorization for a short-term testing scenario and shall not be construed as a substitute for any solution, temporary or long-term, that may be proposed and/or approved by the District.

20. This Order does not convey any property rights or any rights or privileges other than those specified in the Order.

21. Failure to comply with the conditions contained within this Order shall constitute a violation of a District Order under Chapter 373, Fla. Stat., and enforcement proceedings may be brought in any appropriate administrative or judicial forum.

22. If, for any reason, including any adverse water quality, water quantity, or other negative impacts occur as a result of this Order, the District reserves the right to

immediately withdraw this Order upon notice.

22. The City shall hold and save the District harmless from any and all damages, claims, or liabilities which may arise by reason of this Order.

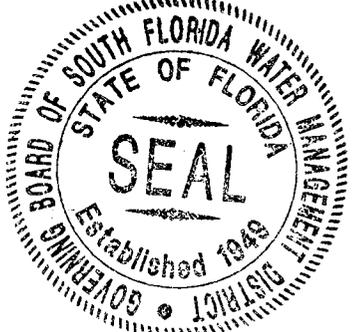
23. If the District petitions or sues for enforcement of the terms of this Order, the District reserves the right to initiate appropriate legal action, to impose civil penalties and collect attorney's fees and costs.

24. Persons whose substantial interests are affected by this Order shall have a right, pursuant to Chapter 120 and Section 373.119(3), Fla. Stat., and as stated in the attached Notice of Rights to petition for an administrative hearing.

25. This Order shall take effect upon execution by the Executive Director of the District, or his designee, and shall expire at 12:01 AM, March 23, 2009. This Order is subject to the Governing Board's concurrence at its next regularly scheduled meeting.

26. A Notice of Rights is attached as Exhibit A.

DONE AND SO ORDERED at West Palm Beach, Palm Beach County, Florida, this 19th day of March, 2009.



BY: Carol Wehle
CAROL WEHLE
EXECUTIVE DIRECTOR

LEGAL FORM APPROVED:

ATTESTED:

BY: Elizabeth D. Ross
Elizabeth D. Ross

BY: [Signature]
DATE: 3-19-09

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.