RESOLUTION NUMBER 07-18

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, IMPLEMENTING WATER SHORTAGE EMERGENCY RESTRICTIONS ORDERED BY THE SOUTH FLORIDA WATER MANAGEMENT DISTRICT AND PROVIDING AN EFFECTIVE DATE

WHEREAS, Florida Statutes provide that municipalities shall have the governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal services, and exercise any power for municipal purposes, except when expressly prohibited by law; and

WHEREAS, Article X of the Town Charter of the Town of Fort Myers Beach empowers the Town Council to adopt, amend, or repeal such ordinances and resolutions as may be required for the proper governing of the Town; and

WHEREAS, the Town of Fort Myers Beach Water Shortage Plan Ordinance, also known as Ordinance 96-09, requires the Town to assist the South Florida Water Management District ("the District") with enforcement of water use restrictions or other measures adopted by the District's Governing Board ("Governing Board") pursuant to Chapter 40E-21, Florida Administrative Code ("FAC"); and

WHEREAS, Section Five (D) of Ordinance 96-09 provides that when the Governing Board declares a water shortage emergency condition within Lee County, Florida, all water use restrictions or other measures adopted by the District pursuant to Chapter 40E-21 FAC shall be enforced by the Town within its municipal limits; and

WHEREAS, Section Five (E) and Seven, respectively, of Ordinance 96-09 provide that any violation of the provisions of Chapter 40-E21, FAC, or any order issued pursuant thereto shall constitute a violation of Ordinance 96-09 and set forth the penalties for violations, including a warning within the first 30 days of declaration of a water shortage emergency condition; and

WHEREAS, on April 12, 2007, the Governing Board issued a Declaration of Emergency Modified Phase II Severe Water Shortage Restrictions with regard to Lee County, Florida, pursuant to Sections 373.083, 373.175 and 373.246, Florida Statutes and Chapter 40E-12, FAC, as set forth in detail in SFWMD Order # 2007-060-DAO-WS, attached hereto as Exhibit "A" and hereby incorporated by reference; and

WHEREAS, the Governing Board declared in Paragraphs 19 and 23 of the aforesaid SFWMD Order that emergency conditions exist which pose an immediate danger to the public health, safety, and welfare and require an immediate order of the District to protect such public health, safety and welfare as well as to protect the health of animals, their habitat, recreational and agricultural uses and water resources of the District.

IT IS HEREBY RESOLVED BY THE TOWN OF FORT MYERS BEACH AS FOLLOWS:

Section 1. Incorporation of Whereas Clauses. The above "Whereas" clauses are hereby incorporated by reference as though fully set forth herein.

Section 2. Declaration of Town Council. Based upon the Order of the Governing Board, the Town Council hereby declares that violation of the SFWMD Order regarding Emergency Modified Phase II Severe Water Shortage Restrictions within the Town would present a serious threat to the public health, safety and welfare and such violation would be irreparable or irreversible in nature since, inter alia, replenishment of water improperly removed from the aquifer under severe drought conditions would not be possible.

Section 3. Direction to Town Manager. The Town Manager is directed to issue a warning to violators up through midnight on May 11, 2007 and thereafter to proceed directly to issuance of violations, in accordance with Section 7 of Ordinance 96-09, with enforcement before the Special Magistrate pursuant to Section 2-424(d) of the Town of Fort Myers Beach Land Development Code (LDC).

Section 4. Effective Date. This resolution shall take effect immediately upon its adoption by the Town Council of the Town of Fort Myers Beach.

The foregoing Resolution was adopted by the Town Council upon a motion by Councilmember Shenko and seconded by Mayor Boback on the 24th day of April, 2007. Upon being put to a vote, the result was as follows:

Dennis C. Boback, Mayor	AYE
Larry Kiker, Vice Mayor	ABSENT
Herb Acken	AYE
Charles Meador, Jr.	AYE
William Shenko, Jr.	AYE

TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH

By: Dennis C. Boback
Dennis C. Boback, Mayor

ATTEST:
Michelle D. Mayher
Michelle D. Mayher, Town Clerk

Approved as to legal form and sufficiency:

By: _____
Anne Dalton, Esquire
Town Attorney

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

RECEIVED
DISTRICT CLERK'S OFFICE
APR 12 2007 4:41 PM
SOUTH FLORIDA
WATER MANAGEMENT DISTRICT

IN THE MATTER OF: **Order No. 2007-060-DAO-WS**

Declaration of Emergency Modified Phase II Severe Water Restrictions within the Caloosahatchee River Watershed – North Water Use Basin, Caloosahatchee River Watershed – South Water Use Basin, South Hendry County/L-28 Gap Water Use Basin, Big Cypress Preserve Water Use Basin, Fakahatchee North Water Use Basin, Fakahatchee South Water Use Basin, and the Coastal Collier County Water Use Basin within Lee, Glades, Hendry, Collier, and portions of Charlotte Counties.

_____/

DECLARATION OF EMERGENCY MODIFIED PHASE II SEVERE WATER SHORTAGE 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 ("Order") Sections 373.083, 373.175 and 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. The area determined to be under stress is depicted in Exhibit A, which is attached and incorporated into this Order, and is described as: those portions of Lee, Charlotte, Glades, Hendry, and Collier Counties which are within the Caloosahatchee River Watershed - North Water Use Basin, Caloosahatchee River Watershed - South Water Use Basin, the South-Hendry County/L-28 Gap Water Use Basin, Fakahatchee

North Water Use Basin, Fakahatchee South Water Use Basin, Big Cypress Preserve Water Use Basin, Coastal Collier County Water Use Basin, and are within the jurisdiction of the District.

2. The sources of water supply that are affected by this Order include: A) all surface waters within the above-mentioned water use basins as identified in Exhibit A that are not covered by Order 2007-033-DAO-WS; and B) groundwater from the Water Table, Lower Tamiami, Sandstone and Mid-Hawthorn Aquifers.

3. On the southwest coast of Florida, the Water Table Aquifer, the Lower Tamiami Aquifer, and the Sandstone Aquifer normally receive recharge from rainfall during the wetter months of June through October. Water levels within these sources decline during the dry months of November through May, due to higher demands and reduced rainfall. Rainfall in Southwest Florida has been significantly below normal rainfall levels, ranging from 5 to 8 inches below normal for the dry season (typically November through May) since November 1, 2006. The Southwest Coast Basin has received only 4.12 inches of rain, this is 34% of the 12.22 inch average rainfall for this time period. The East Caloosahatchee Basin has received only 3.74 inches of rain, this is 31% of the 12.03 inch average for this time period. The Big Cypress Preserve Water Use Basin has received 6.33 inches of rain, which is only 55% of the normal 11.56 inches of average rainfall for this time period.

4. Water levels in surface water canals and in the Water Table Aquifer are generally below normal for this time of year. Water levels in the Water Table Aquifer are 1 to 1-1/2 feet above their lows for the period of record. As water levels in the Water Table Aquifer drop, recharge to the underlying Lower Tamiami and Sandstone

Aquifers decreases, this in turn causes reductions in the water levels of those aquifers. In addition, low groundwater levels in the Water Table Aquifer result in increased risk of wild fires.

5. Water levels within the Lower Tamiami Aquifer along coastal Collier County and southwestern Lee County range from sea level to a few feet below mean sea level. There is a landward gradient across the saltwater interface in southern coastal Lee County and coastal Collier County as a result of the current drought. These conditions favor saltwater intrusion in these areas.

6. Water levels in the Sandstone Aquifer have reached record low levels for this date and a number of well water levels within eastern Lee County and western Hendry County are within two feet of their all-time lows. These conditions have caused well failures for domestic wells using suction-type pumps. Water levels within the Sandstone Aquifer in Lehigh Acres are approaching Maximum Developable Limits as described in criteria 3.2.4 of the District's "Basis of Review for Water Use Applications Within the South Florida Water Management District." Pursuant to that criteria, harmful aquifer mining occurs when the Maximum Developable Limits are encountered or exceeded.

7. Water levels in the Mid-Hawthorn Aquifer in Lee County are tens of feet below land surface, with several monitoring stations (e.g., North Cape Coral) reporting all-time low levels. Water levels are approximately 10 to 17 feet lower than last year at this date.

8. Lee County Utilities relies on water from the Caloosahatchee River to provide potable supply to portions of their North Service Area. The water intake at the

Olga potable water treatment plant is experiencing saltwater intrusion with dissolved chloride levels of 298 mg/l measured on April 11, 2007. The secondary drinking water standard is 250 mg/l.

9. Lake Okeechobee normally provides freshwater flows to keep the water of the Olga potable water treatment plant fresh. However, Lake Okeechobee has dropped to a level (10.07 as of April 11, 2007) where it is not feasible to deliver sufficient freshwater flows to purge the saltwater from the Olga plant intakes. On March 15, 2007, the District imposed Modified Phase II Severe Water Shortage Restrictions on users of Lake Okeechobee including the North Lee County Utility Service Area.

10. The Climate Prediction Center is projecting a high probability of "below normal" rainfall from April through May 2007. Prospects for significant rainfall within the next two months are poor.

11. Projected evapotranspiration (ET) is also expected to increase for the months of April and May. Combined with the low rainfall predictions, conditions favor a net reduction in water supply availability over the next two months. At the same time, supplemental demands for consumptive users are anticipated to peak during this period, creating the potential for further depletion of limited surface water groundwater storage.

12. Based on the unanticipated below average rainfall received over the recent dry season, higher than normal temperatures, projected high levels of user demands during this dry period, and unanticipated continuing decline in already low surface water and groundwater levels, the potential for serious harm to the water resources is significant.

13. The District recognizes there are economic implications of imposing Phase II restrictions on all use classes within the Lower West Coast. However, implementing such cutbacks are necessary and additional restrictions may be needed in the future.

14. In addition to this Order, Modified Phase II Severe Water Shortage Restrictions have been placed on all users within the Lake Okeechobee Service Area, including the Everglades Agricultural Area Water Use Basin, Lakeshore Perimeter Water Use Basin, Caloosahatchee River Water Use Basin, Portions of the Indian Prairie Water Use Basin, and the St. Lucie River Water Use Basin in response to extremely low water availability in Lake Okeechobee, Order No. 2007-033-DAO-WS, and Modified Phase III restrictions are being considered at the April 12, 2007 Governing Board meeting.

15. The District finds that an emergency declaration is required to address the need for immediate action.

ULTIMATE FACTS AND CONCLUSIONS OF LAW

16. Pursuant to Section 373.083, F.S., the Governing Board is authorized to issue orders to implement the provisions of Chapter 373, F.S., including emergency orders pursuant to Section 120.569(2)(n), F.S. Sections 373.175 and 373.246, F.S., specifically authorize the Governing Board to issue orders declaring the existence of a water shortage.

17. Section 373.246, F.S., authorizes the Governing Board to adopt a water shortage plan to regulate the withdrawal and use of water resources of the District. Chapter 40E-21, F.A.C., is the District's Water Shortage Plan.

18. Pursuant to Rule 40E-1.611, F.A.C., an emergency exists when immediate action is necessary to protect, public health, safety, welfare; the health of animals, fish or aquatic life; the works of the District; a public water supply, or recreational, commercial, industrial, agricultural or other reasonable uses of land and water resources.

19. Based on the findings recited above and pursuant to Sections 373.175 and 373.246, F.S., it is hereby concluded that emergency conditions exist that pose an immediate danger to the public health, safety, or welfare and requires an immediate order of the District to protect the public health, safety or welfare.

20. A declaration of water shortage and any provision or restriction adopted pursuant thereto under the water shortage plan may be modified by the Board pursuant to Rule 40E-21.291, F.A.C. 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.

21. Rule 40E-21.401, F.A.C., and permit conditions authorize the Governing Board to obtain data concerning monitoring of water usage. The District has monitored the conditions of the water resources and the needs of the users.

22. Based on the cumulative assessment of water availability in Lake Okeechobee and climate forecasts, there is a significant potential that sufficient water will not be available in the regional system to meet anticipated demands without mandatory restrictions on water usage within the Basins. The rapid decline in groundwater level declines and the present and projected water demands in the Basins

require the imposition of mandatory water shortage restrictions.

23. Pursuant to Sections 373.083, 373.175 and 373.246, F.S., and after consideration of the factors listed in Rule 40E-21.331, F.A.C., and the facts described above, the Governing Board finds that an emergency exists requiring immediate action necessary to protect the public health, safety, and welfare and to protect the health of animals, their habitat, recreational and agricultural uses and water resources of the District.

24. Considering the above findings of fact, it is necessary to declare a water shortage, imposing Modified Phase II Severe Water Shortage Restrictions, as modified, for all use classes withdrawing water from the Water Table Aquifer, the Lower Tamiami Aquifer, the Sandstone Aquifer and the Mid-Hawthorn Aquifer within the Caloosahatchee River Watershed–North Water Use Basin, Caloosahatchee River Watershed–South Water Use Basin, South Hendry County/L-28 Gap Water Use Basin, Big Cypress Preserve Water Use Basin, Fakahatchee North Water Use Basin, Fakahatchee South Water Use Basin, and the Coastal Collier County Water Use Basin within Lee, Charlotte, Glades, Broward, Hendry, and Collier Counties. The Phase II restrictions identified in Rule 40E-21.531, F.A.C., and as modified by this Order, are geared toward achieving the goal of a 30% cutback in overall demand.

ORDER

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

25. A water shortage is declared and modified Phase II Severe Water Shortage restrictions are imposed on all use classes that withdraw ground water from

the Water Table Aquifer, the Lower Tamiami Aquifer, the Sandstone Aquifer and the Mid-Hawthorn Aquifer and surface waters within the Lower West Coast Region, as depicted in the attached Exhibit A that are not covered by Order 2007-033-DAO-WS. A copy of the Modified Phase II Severe Water Shortage Restrictions is attached as Exhibit B.

26. Information regarding this Water Shortage Order is posted on the District's Internet Web Site at www.sfwmd.gov, and will be communicated on a water "user hotline" for persons that do not have access to the Internet or have additional questions for District staff.

27. Agricultural uses that are otherwise in the Lake Okeechobee Service Area and use Lake Okeechobee or connected surface waters as a source, shall comply with the Phase II restrictions imposed by Water Shortage Order No. 2007-033-DAO-WS, or subsequently declared, stricter orders affecting all or part of the Lake Okeechobee Service Area.

28. Permitted water users are requested to continue submitting water usage monitoring data in accordance with permit conditions, unless specifically required to report use on a more frequent basis in this Order. In addition, the Director of the Water Use Regulation Department 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.

29. A user may request relief from this Order by filing an application for variance in accordance with Rule 40E-21.275, F.A.C., but must conform to the water

use restrictions until the Executive Director grants a temporary variance or the Governing Board grants a variance.

30. 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 boundaries of Exhibit A 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.

31. This Order imposing modified Phase II Severe Water Shortage Restrictions, shall become effective on April 13, 2007 and shall remain in effect until modified or rescinded by the Governing Board, or the Executive Director, if the circumstances set forth in Subsection 40E-21.291(5), F.A.C., are present.

32. A copy of the Notice of Rights is attached as Exhibit C.

DONE AND SO ORDERED at a public meeting held at 3301 Gun Club Road, West Palm Beach, Florida 33406 on this 12th day of April, 2007.

(corporate seal)

ATTEST:

BY: _____
Assistant Secretary

ON: 4/12/2007

SOUTH FLORIDA WATER
MANAGEMENT DISTRICT
BY ITS GOVERNING BOARD

BY: _____ for C.W.
CAROL ANN WEHLE
Executive Director

Legal Form Approved:

BY _____
Elizabeth D. Ross

LOWER WEST COAST REGION

Modified Phase II Water Shortage
(Delineation of Individual Water Use Basins)

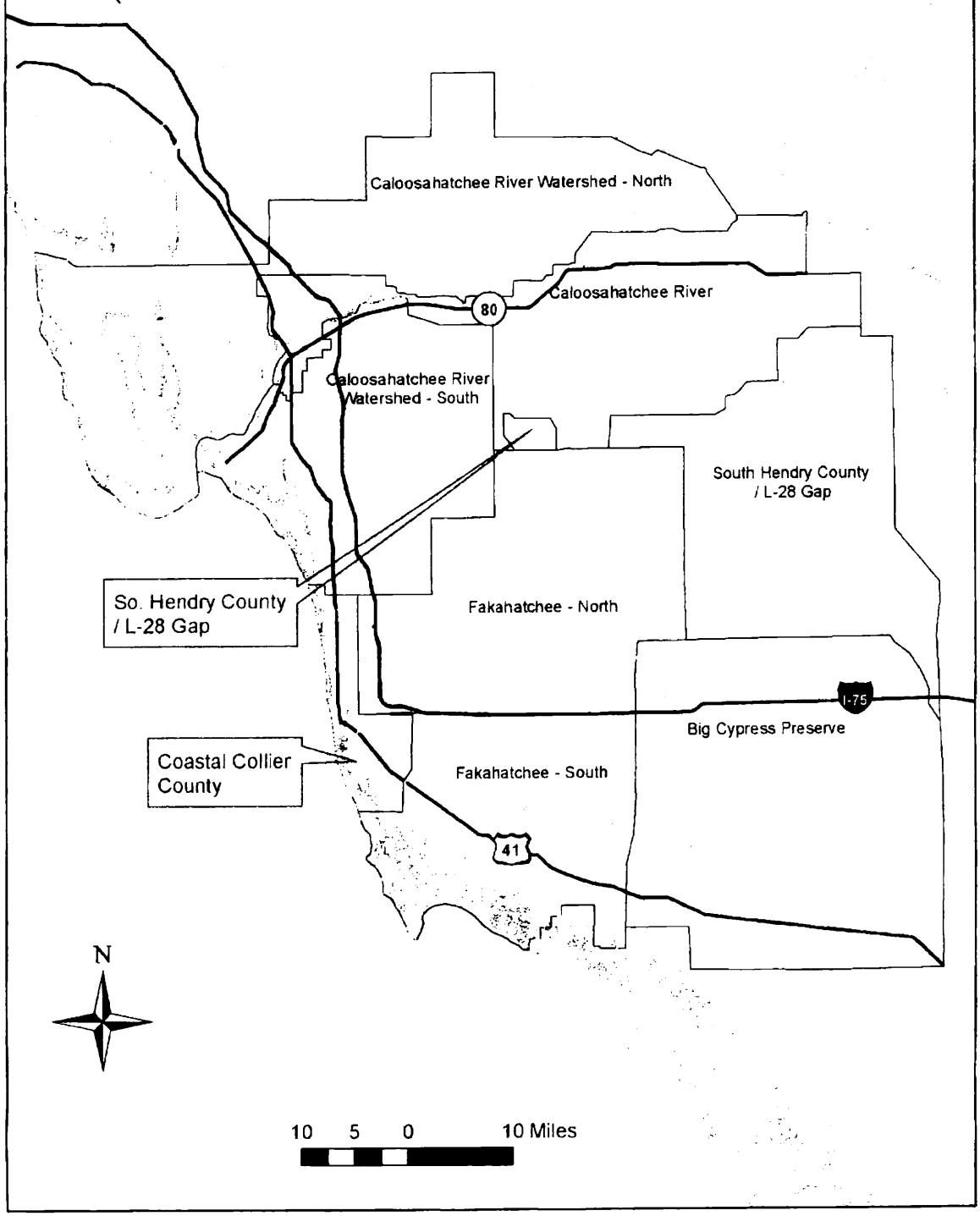

EXHIBIT A

EXHIBIT B

MODIFIED PHASE II RESTRICTIONS FOR LOWER WEST COAST

(1) Essential/Domestic/Utility/Commercial.

(a) Essential Use.

1. The use of water for firefighting, safety, sanitation, health and medical purposes and other essential uses shall not be restricted.

2. Fire hydrant flushing shall be undertaken only on an emergency basis.

3. Sanitary sewer line flushing and testing shall not be restricted except on a voluntary basis.

(b) Domestic Type Use.

1. Residential type domestic use shall be voluntarily reduced to 50 gallons per person per day.

2. Domestic type use in industrial and commercial establishments shall be voluntarily reduced.

(c) Water Utility Use.

1. Initial pressure at the point of use (meter) shall be reduced to levels no greater than 45 pounds per square inch. Upon reduction of pressure, the utility shall notify the appropriate fire-fighting agencies and make arrangements for direct communication when additional pressure is required.

2. New water line flushing and disinfection shall be restricted to the hours of 7:00 P.M. to 7:00 A.M. seven days per week.

3. As may be appropriate the utility shall institute additional voluntary conservation measures such as reclaiming of backwash water, improving and accelerating leak detection surveys and repair programs, installing and calibrating meters, and stabilizing and equalizing system pressures.

(d) Power Production Use. Water used for power production shall be voluntarily reduced.

(e) Commercial and Industrial Process Use.

1. Commercial car washes shall be restricted as follows:

a. For washes servicing passenger vehicles and mobile equipment weighing less than 10,000 pounds,

i. Use in excess of 75 gallons per wash shall be prohibited; and

ii. Use equal to or less than 75 gallons per wash shall be voluntarily reduced;

b. For washes servicing mobile equipment weighing 10,000 pounds or more,

i. Use in excess of 150 gallons per wash shall be prohibited; and

ii. Use equal to or less than 150 gallons per wash shall be voluntarily reduced.

2. Water used for commercial and industrial processes shall be voluntarily reduced.

3. Water use for cleaning, adjusting and repair of irrigation systems by a licensed person or entity shall be restricted as follows:

a. Projects one irrigated acre or greater in size shall be limited to one hour per acre per week,

b. Projects less than one irrigated acre in size shall be limited to 10 minutes per zone per week.

4. Water use for pesticide application under the supervision of a licensed pest control operator shall be voluntarily reduced. Under the provisions of this subparagraph, the applicator must be on the premises when water is applied outside of the hours allowed for irrigation.

5. Water use for well development under the supervision of a licensed well contractor shall be voluntarily reduced.

6. Water use for mobile equipment washing by a licensed person or entity shall be voluntarily

reduced.

(2) Agriculture.

(a) Agricultural Use.

1. Overhead irrigation of agricultural crops is permitted after 4:00 P.M and before 12:00 P.M.. seven days per week. 2. Low volume irrigation hours shall not be restricted.

3. 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 which is withdrawn and released or lost to the user but is not immediately available for other users.

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

5. Overhead irrigation stress reduction shall be allowed daily for 10 minutes per irrigation from 11:30 A.M. to 12:00 P.M. and 1:30 P.M. to 2:00 P.M, seven days per week.

6. (a) Livestock Use. Livestock water use shall be voluntarily reduced.

(b) Aquacultural Use. Aquacultural water use shall be voluntarily reduced.

(c) Soil Flooding.

7. Soil flooding for vegetable seed planting, rice planting, burning of sugarcane prior to harvest and to permit harvesting of sod shall be voluntarily reduced.

8. Soil flooding for all other purposes shall be prohibited.

(e) Freeze Protection. Water use for freeze protection shall be restricted to situations in which official weather forecasting services predict temperatures likely to cause permanent damage to crops.

(3) Nursery/Urban Irrigation/Recreation.

(a) Nursery Use.

1. Low volume irrigation uses and low volume hand watering shall be voluntarily reduced.

2. Overhead irrigation uses shall be restricted as follows:

a. Inside – 8:00 A.M. to 8:00 P.M., seven days per week.

b. Outside – 2:00 A.M. to 8:00 A.M., seven days per week.

c. Outside overhead irrigation for containerized nursery stock moisture stress reduction on stock grown in containers shall be allowed daily for 10 minutes per irrigation zone during daylight hours seven days per week.

3. Flood irrigation systems shall be restricted to 6 days per month.

(b) Landscape Irrigation – New Installation.

1. For installations which have been in place for less than 30 days, and

a. less than 5 irrigated acres in size, water use for irrigation shall be restricted to the hours of 4:00 A.M. to 8:00 A.M., Monday, Tuesday, Wednesday, Thursday, Saturday and Sunday.

b. 5 irrigated acres or greater in size, water use for irrigation shall be restricted to the hours of 2:00 A.M. to 8:00 A.M. Monday, Tuesday, Wednesday, Thursday, Saturday, and Sunday.

2. Low volume irrigation and low volume hand watering of new landscaping shall be voluntarily reduced.

3. Cleaning and adjusting of new irrigation systems shall be restricted to 10 minutes per zone on a one time basis.

(c) Landscape Irrigation – Existing Installation.

1. For existing installations less than 5 irrigated acres in size, water use for irrigation shall be restricted to the hours from 4:00 A.M. to 8:00 A.M. for all types of irrigation, except low volume

irrigation or otherwise provided in subsection c., and 5:00 P.M. to 7:00 P.M. for low volume hand watering, for two days per week.

a. Installations with odd addresses shall be permitted to irrigate on Wednesday and Saturday.

b. Installations with even addresses or no address shall be permitted to irrigate on Thursday and Sunday.

c. Installations which irrigate both even and odd addresses, including multi-family units, with existing landscapes less than five irrigated acres in size shall be permitted on Thursday and Sunday and shall be restricted to the hours from 4:00 A.M. to 8:00 A.M., and 5:00 P.M. to 7:00 P.M. for low volume hand watering. No area may be irrigated more than 2 days per week.

2. For existing installations 5 irrigated acres or greater in size, water use for irrigation shall be restricted to the hours from 12:01 A.M. to 8:00 A.M. for all types of irrigation, except low volume irrigation or otherwise provided in subsection c., and 5:00 P.M. to 7:00 P.M. for low volume hand watering, for two days per week.

a. Installations with odd addresses shall be permitted to irrigate on Wednesday and Saturday.

b. Installations with even addresses or no address shall be permitted to irrigate on Thursday and Sunday.

c. Installations which irrigate both even and odd addresses, including multi-family units, with existing landscapes 5 irrigated acres and greater in size, shall be permitted on Thursday, and Sunday and shall be restricted to the hours from 12:01 A.M. to 8:00 A.M. and 5:00 P.M. to 7:00 P.M. for low volume hand watering. No area may be irrigated more than 2 days per week

3. Water use for cleaning, adjusting and repair of existing irrigation systems shall be limited to ten minutes per zone per week.

4. Low volume irrigation shall be voluntarily reduced. Low volume hand watering of existing landscaping as minimally necessary to prevent plant die off is allowed.

5. Irrigation of Bermuda turfgrass sports fields shall be restricted to the hours of 12:01 A.M. to 8:00 A.M. on Thursdays and Sundays. Irrigation of surrounding facilities not planted in Bermuda turfgrass shall be irrigated as per the restrictions for the irrigation of existing landscape as stated in Subsection (d), as applicable.

(d) Recreation Area Use.

1. Landscape irrigation for new and existing recreation areas shall be restricted to the hours prescribed for new and existing landscape irrigation in paragraphs (b) and (c) respectively.

2. Irrigation of seeded and/or sprigged recreation areas that have been in place for less than thirty days shall be allowed daily for 5 minutes per irrigation zone from 11:30 A.M. to 12:00 P.M., 1:30 P.M. to 2:00 P.M. and 3:30 P.M. to 4:00 P.M.

3. Watering of pervious non-vegetated recreational/sporting surfaces shall be restricted to ten minutes of application prior to each recreational/sporting event. Low volume watering shall be used.

(e) Golf Course Use. Golf courses shall reduce their 1 in 10 monthly demands as calculated using the District's Basis of Review for Water Use Applications by 30%. The 30% cutback shall be calculated and applied on a weekly basis and the irrigation volumes applied shall be reported to the District via fax (561 682-2633) or phone (561 682-2190) by noon every Friday. For those golf course that use water from multiple sources, such as surface water and reclaimed water, the weekly pumpage reports shall specify the volumes pumped from each source.

(f) Water Based Recreation Use.

1. Water based recreation water use shall be voluntarily reduced.

2. Draining of facilities into sewers or onto impervious surfaces shall be prohibited.

3. Existing facilities shall not be refilled except for makeup water, unless the facility is leaking

more than one inch of water a day. If a facility is leaking more than one inch of water a day and is in need of repair, it may be drained onto a pervious surface for repairs and subsequently refilled.

(4) Miscellaneous.

(a) Cooling and Air Conditioning Use. The use of water for cooling and air conditioning shall be restricted to that amount of water necessary to maintain a minimum temperature of 78 degrees Fahrenheit.

(b) Dewatering Use. Discharge of fresh water to tide from dewatering shall be prohibited.

(c) The watering in of individual cemetery grave sites to complete burial services shall be conducted via low volume hand watering only.

(d) Filling of existing water based recreational facilities is allowed after repair or resurfacing.

(e) Water served in restaurants shall only be provided upon request.

(f) Other Outside Uses.

1. Washing or cleaning streets, driveways, sidewalks, or other impervious areas with water shall be prohibited.

2. Outside pressure cleaning shall be restricted to only low volume pressure cleaning. Non-commercial low volume pressure cleaning shall be permitted on Wednesday and Saturday for odd addresses or Thursday and Sunday for even addresses. Commercial low volume pressure cleaning may occur seven days a week.

3. Mobile equipment washing with water shall be restricted to the hours and days prescribed for existing landscape irrigation in paragraph (3)(c)1., using only low volume mobile equipment washing methods and shall be conducted over a pervious surface or in an area that immediately drains to a pervious surface. Rinsing and flushing of boats after saltwater use shall be limited to 15 minutes once a day for each boat.

4. Washing boats that serve as a primary residence shall be restricted to the hours and days prescribed for existing landscape irrigation in paragraph (3)(c)1. Boats with an odd slip number shall be permitted to be washed on Wednesday and Saturday. Boats with an even slip number or no slip number shall be permitted to be washed on Thursday and Sunday.

5. Rinsing of salt spray from vehicles in coastal areas shall be limited to 2 minutes per vehicle, one time per day. Low volume methods shall be used.

6. Watering of fertilizer or pest control products as required by the product label is permitted for a maximum of 10 minutes per zone immediately following application. The applicator must be on the premisses when water is applied outside of the hours otherwise applicable irrigation restrictions provided herein.

(g) Aesthetic Use.

1. Non-recirculating outside aesthetic uses of water shall be prohibited.

2. Water use for outside aesthetic purposes by facilities that recirculate water shall be voluntarily reduced and must meet the following criteria:

a. Draining of water from outside aesthetic facilities into sewers or onto impervious surfaces is prohibited.

b. Outside aesthetic facilities shall not be operated when wind conditions cause water to be lost from the recirculating capacity of the facility.

c. Outside aesthetic facilities that leak water shall not be operated.

d. Outside aesthetic facilities that lose water due to an overflow shall not be operated.

3. Inside aesthetic uses of water shall be voluntarily reduced.

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 <u>not</u> 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.