

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

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Order No.: 2010-214-DAO-WS

IN THE MATTER OF:

Modification of Order No. 2010-206-DAO-WS  
Imposing a Water Shortage Warning for  
All Use Classes Using Surface Water  
From Lake Istokpoga, the Indian Prairie  
Water Use Basin, and Lake Okeechobee  
and Surface Waters Hydraulically  
Connected to Lake Okeechobee within  
the Everglades Agricultural Area Water  
Use Basin, Lakeshore Perimeter Water  
Use Basin, Caloosahatchee River Water  
Use Basin, Interior Palm Beach County  
Water Use Basin, Interior Martin County  
Water Use Basin, and St. Lucie River  
Water Use Basin within all or parts of  
Okeechobee, Glades, Highlands, Lee,  
Hendry, Palm Beach, Martin, and St.  
Lucie Counties

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### **ORDER MODIFYING WATER SHORTAGE WARNING**

The Governing Board of the South Florida Water Management District, after considering recommendations of District staff and being otherwise fully apprised of the matter, issues this Order modifying water shortage warning, Order No. 2010-206-DAO-WS, pursuant to Chapter 40E-21, Fla. Admin. Code, making the following Findings of Fact and Ultimate Facts and Conclusions of Law.

#### **FINDINGS OF FACT**

1. On November 11, 2010, the Governing Board issued a water shortage warning for surface waters in Lake Istokpoga, the Central and Southern Florida Flood Control Project Canals known as C-39A, C-40, C-41, and C-41A ("Project Canals") north of L-59, L-60, and L-61, and Lake Okeechobee and the surface waters

hydraulically connected to Lake Okeechobee within the basins identified below.

2. The warning requested all water users in the above-mentioned regions to voluntarily follow Phase I Moderate Restrictions. A copy of Order No. 2010-206-DAO-WS is available at [www.sfwmd.gov](http://www.sfwmd.gov) or from the District Clerk.

3. The resource concerns set forth in Water Shortage Order No. 2010-206-DAO-WS remain generally unchanged. A map depicting the area subject to this Order is attached hereto as Exhibit "A."

4. Based on the La Niña conditions, the upcoming dry season has an increased probability of below normal rainfall for the entire District. Statistical analyses of Lake Okeechobee water levels during La Niña years indicate that Lake Okeechobee is likely to fall into the water shortage management zone as early as mid-January.

5. The Palmer Index for Lake Okeechobee Tributary Conditions is -2.35 and the Lake Okeechobee Seasonal Net Inflow Forecast for sub-sampling of AMO warm & La Niña ENSO years is -0.54 feet; both indicators are in the high water supply risk condition according to the SFWMD's Water Supply Outlook dated December 6, 2010.

6. Additional water releases from Lake Okeechobee for freeze protection have occurred and are projected to occur due to multiple, early December freeze events.

7. According to the United States Army Corps of Engineers, the stage for Lake Istokpoga stage is 38.68 feet NGVD for the period ending at midnight on December 13, 2010, which is 0.83 feet below the regulation schedule and 0.16 feet above the line at which water releases from Lake Istokpoga would terminate.

8. Given these conditions, Order No. 2010-206-DAO-WS requires modification to delegate authority to the Executive Director to issue a water shortage order in the event water levels in Lake Okeechobee fall within Zone A as depicted on Figure 22-4 referenced in Rule 40E-22.332, Fla. Admin. Code. Such conditions may warrant issuance of a water shortage order in the basins subject this order prior to the January Governing Board meeting.

9. As provided in Water Shortage Order No. 2010-206-DAO-WS, the water sources subject to this Order are surface waters located within the Everglades Agricultural Area Water Use Basin, Lakeshore Perimeter Water Use Basin, Caloosahatchee River Water Use Basin, the Indian Prairie Water Use Basin, the Interior Palm Beach County Water Use Basin, the Interior Martin County Water Use Basin, and the St. Lucie River Water Use Basin, which comprise the Lake Okeechobee Region and are located within all or part of Okeechobee, Glades, Highlands, Lee, Hendry, Palm Beach, Martin Counties, and St. Lucie Counties and the Indian Prairie Water Use Basin which is part of the Indian Prairie Region and located in all or part of Highlands and Glades Counties. The affected areas are depicted on the map attached as Exhibit "A."

10. As provided in Order No. 2010-206-DAO-WS, all use classes identified in Rule 40E-21.651, Fla. Admin. Code, within the above-described basins remain subject to this Order. However, water users located within these basins are primarily within the agriculture water use class.

#### **ULTIMATE FACTS AND CONCLUSIONS OF LAW**

11. Section 373.246, Fla. Stat., authorizes the Governing Board to adopt a water shortage plan to regulate the withdrawal and use of water so as to protect the

water resources of the District.

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

13. Regional water shortage plans for the Lake Istokpoga – Indian Prairie Area and Lake Okeechobee are contained in Chapter 40E-22, Fla. Admin. Code.

14. Rule 40E-21.231(3), Fla. Admin. Code, authorizes the Governing Board to issue a water shortage warning calling for voluntary reductions in demand prior to declaring a water shortage.

15. On November 11, 2010, the Governing Board issued Order No. 2010-206-DAW-WS which called for voluntary water use restrictions for users of surface waters from Lake Istokpoga, the Project Canals north of L-59, L-60, and L-61, and Lake Okeechobee and the surface waters hydraulically connected to Lake Okeechobee.

16. Chapter 40E-22, Fla. Admin. Code, contains the Regional Water Shortage Plans the District's Governing Board adopted for the subject areas.

17. The District has monitored the condition of the water resources and the needs of the users as required by Rule 40E-21.221, Fla. Admin. Code.

18. The District has compared current data with historical data and has determined that the estimated present and anticipated available water supply within the same class may be insufficient to meet the estimated present and anticipated demands of the users and may be insufficient to protect the water resources from harm as required by Rule 40E-21.221(3), Fla. Admin. Code.

19. Considering the above findings of fact, the best present option to protect the surface water resources of the affected water use basins is to modify the water shortage warning calling for voluntary Phase I reductions presently in effect.

ORDER

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

20. Order No. 2010-206-DAO-WS is hereby modified to delegate the 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 demonstrates that a modification of the Board's order is warranted as based upon water levels in Lake Okeechobee falling into Zone A as identified in Figure 22-4 and referenced in Rule 40E-22.332, Fla. Admin. Code, and/or in response to conditions in Lake Istokpoga.

21. A Notice of Rights is attached hereto as Exhibit "B."

22. This Order shall become effective immediately upon execution 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), Fla. Admin. Code, are present.

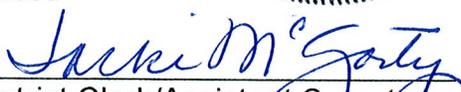
DONE AND SO ORDERED in West Palm Beach, Florida, on this 20<sup>th</sup> day of December, 2010.



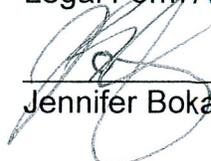
SOUTH FLORIDA WATER  
MANAGEMENT DISTRICT  
By its Governing Board

  
CAROL ANN WEHLE  
Executive Director

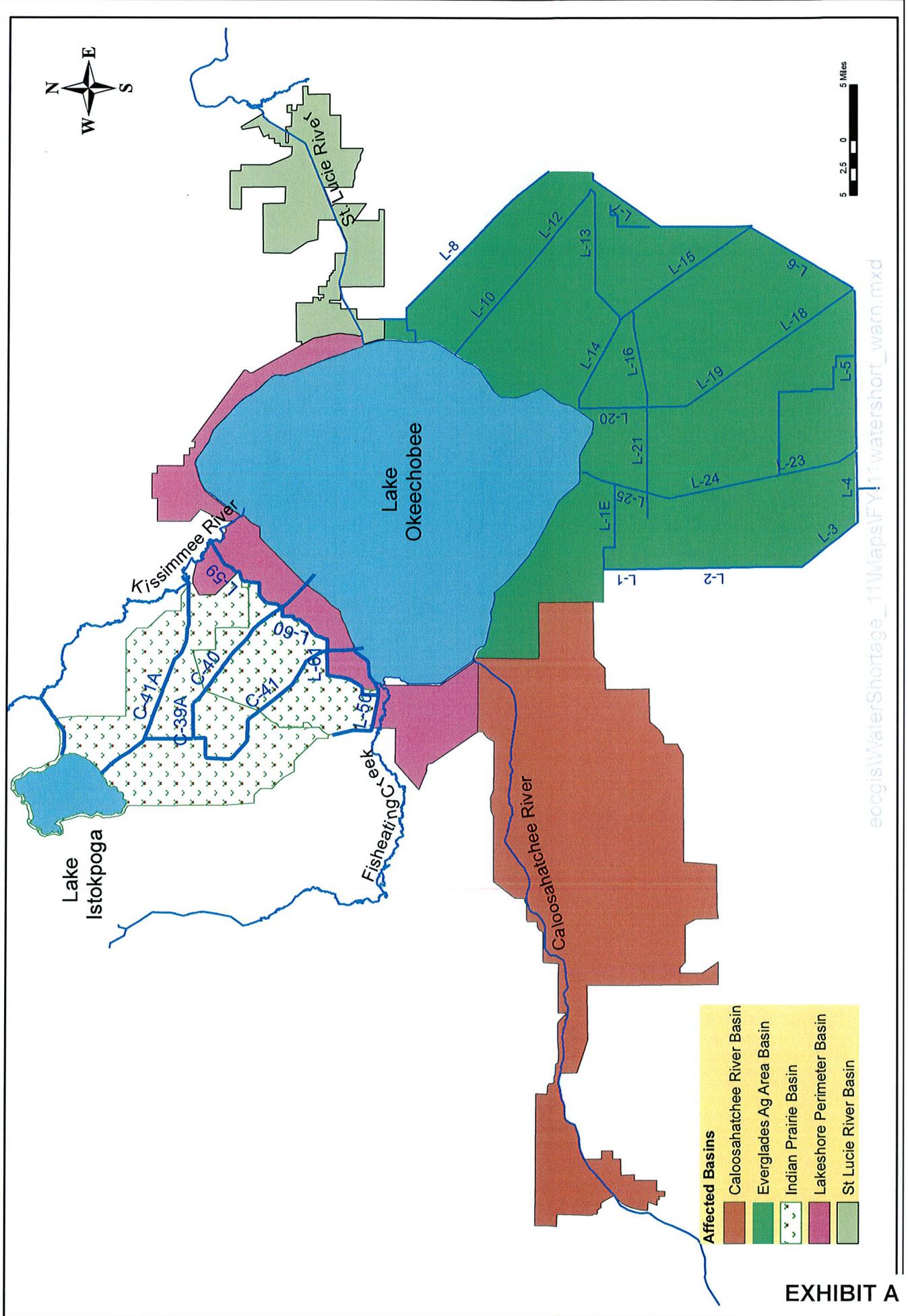
Attest:

  
District Clerk/Assistant Secretary  
Date: December 20, 2010

Legal Form Approved:

  
Jennifer Bokankowitz, Esq.

# Water Shortage Warning for the Lake Okeechobee Basins, Indian Prairie Water Use Basin, and Lake Istokpoga



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## 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.