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

Order No. 2011-039-DAO-WS

IN THE MATTER OF:

Declaration of Modified Phase I Water Shortage Restrictions for the Golf Course Use Class and Modified Phase II Water Shortage Restrictions for the Landscape Irrigation Use Class Withdrawing from Surface and Groundwater within the Boundaries of the South Florida Water Management District

_____/

DECLARATION OF WATER SHORTAGE IMPOSING MODIFIED PHASE I AND II RESTRICTIONS

The Executive Director of the South Florida Water Management District ("District"), after considering recommendations of District staff and being otherwise fully apprised of the matter, issues this Order pursuant to Sections 373.083, 373.175, and 373.246, Florida Statutes, and Chapter 40E-21, Florida Administrative Code, based on the following Findings of Fact and Ultimate Facts and Conclusions of Law.

FINDINGS OF FACT

1. On March 10, 2011, the Governing Board issued Order No.: 2011-031-DAO-WS issuing a water shortage warning for all users withdrawing surface or groundwater within the geographic boundaries of the District. A copy of Order No.: 2011-031-DAO-WS is available from the District Clerk.

2. The Governing Board delegated 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 demonstrated that modification of the Board's order was warranted and necessary.

3. The sources of water affected by this Order are the surface and groundwater sources within the jurisdictional boundaries of the District as described in Rule 40E-21.631, Fla. Admin Code. A map depicting the area subject to this Order is attached hereto as Composite Exhibit "A."

4. The golf course water use class, identified in Rule 40E-21.651, Fla. Admin. Code, located within Broward, Palm Beach, Miami-Dade, Monroe, St. Lucie, Martin, Okeechobee, Glades, Hendry, Lee and Collier Counties are subject to this Order.

5. The landscape irrigation water use class, identified in Rule 40E-21.651, Fla. Admin. Code, within the jurisdictional boundaries of the District is subject to this Order.

6. District staff has been monitoring the conditions of the water resources and the needs of the water users as required by Rule 40E-21.221, Fla. Admin. Code.

7. Since the effective date of Order No. 2011-031-DAO-WS, the water resource concerns described in that order have declined.

8. In 2010, the Upper Kissimmee River Region experienced its sixth driest wet season since 1915. The 2010-11 dry season also has been quite dry. Only 0.42 inches of rain fell in the upper portion of the Kissimmee River Region during February 2011. This is only 18% of the average rainfall for the month of February. From October 1, 2010 through March 17, 2011, 9.29 inches of rain or 65% of the historic average fell in the Upper Kissimmee River Region.

9. The lower portion of the Kissimmee River Region saw 0.21 inches of rain during February 2011. This equates to 9% of the average rainfall for the month of February. From October 1, 2010 through March 17, 2011, 6.67 inches of rain or 55% of the historic average fell over the Lower Kissimmee River region.

10. The U.S. Climate Prediction Center ("CPC") predicts the Kissimmee River Region will continue to experience D1 to D2 (moderate to severe) drought, with below average rainfall throughout the remainder of the dry season.

11. The Lower West Coast ("LWC") Region, like regions described above, has experienced below average rainfall. The southwestern portion of the LWC Region experienced 0.39 inches of rainfall in February 2011. This is only 17% of the average rainfall for the month of February. The East Caloosahatchee portion of this region saw 0.36 inches of rain during February 2011. This is only 17% of the average rainfall for the month. From October 1, 2010 through March 17, 2011, about 6.5 inches of rain or 50% of the historic average fell over the LWC Region. This region is currently experiencing a rainfall deficit of about 6.5 inches.

12. Well below average rainfall conditions seen in the LWC Region are expected to continue for the remainder of the dry season. The CPC has predicted that the LWC Region will experience a D1 to D2 (moderate to severe) drought conditions during the remainder of the dry season.

13. During the month of February, only 0.38 inches of rain fell in the Upper East Coast ("UEC") Region. This is only 15% of the average rainfall for the month of February. From October 1, 2010 through March 17, 2011, 6.18 inches of rain or 36% of the historic average fell over the UEC Region. This region is currently experiencing a

rainfall deficit of about 11 inches. It is likely that drought conditions will intensify. The CPC continues to predict that the UEC Region will experience D2 to D3 (severe to extreme) drought conditions during the remainder of the dry season.

14. Finally, the Lower East Coast ("LEC") Region has also experienced well below average rainfall. During the month of February, 0.58 inches of rain fell in Palm Beach County, Broward County saw 0.17 inches of rain, and Miami-Dade County received 0.1 inch of rain. This is 20%, 6%, and 5%, respectively, below the average rainfall for February. From October 1, 2010 through March 17, 2011, about 7.75 inches of rain or less than half the historic average fell over the LEC Region.

15. The CPC Drought Monitor reflects that the LEC Region is experiencing a D2 to D3 (severe to extreme) drought. Based on the La Niña conditions, the dry season has an increased probability of below normal rainfall.

16. The lack of rainfall has caused surface and groundwater levels to decrease in all areas of the District. In the Kissimmee River Region, about half of the monitoring stations maintained by the United States Geological Survey ("USGS") have water levels between the lowest 10th and the lowest 30th percentile. The rest are at median levels for this time of year.

17. Monitoring data compiled by District staff shows a general decline in lake stages within the Upper Chain of Lakes. As of March 18, 2011, East Lake Tohopekaliga, Lake Tohopekaliga, and Lake Kissimmee measured 56.53, 54.38, and 49.94 feet NGVD, respectively. These water levels are 1.39, 0.5, and 1.06 feet, respectively, below the U.S. Army Corps of Engineers' ("Corps") regulation schedule for the lakes. These lakes are vital to the Kissimmee River Region, as well as the Lake

Okeechobee Region, in that the lakes provide a base flow of water into Lake Okeechobee.

18. Groundwater levels in the LWC Region decreased in all aquifers. Two-thirds of the USGS Surficial and Lower Tamiami aquifer wells are in the lowest 10th to 30th percentiles for their period of record; the rest remain near median levels. Sandstone aquifer levels remain in the lowest 10th to lowest 30th percentile. As of March 18, 2011, well L-2186, located in the Sandstone aquifer, measured 2.48 feet NGVD, 7.48 feet above the maximum developable limit for said aquifer. Mid-Hawthorn aquifer wells vary from below the lowest 10th percentile to within 20 percent of median.

19. A number of minimum flows and levels ("MFLs") have been established across the District. Pursuant to Rule 40E-8.221, Fla. Admin. Code, minimum water levels have been established for the Caloosahatchee Estuary, Northwest Fork of the Loxahatchee River, Biscayne aquifer and peat-forming and marl-forming wetlands within the Everglades.

20. As of March 21, 2011, the District's Caloosahatchee Estuary monitoring gauge, identified as Ft Myers, maintained a 30-day average salinity of 14 practical salinity units ("psu"). Results from this gauge indicate that the MFL criterion for the Caloosahatchee River and Estuary has been exceeded.

21. Water level stages in the UEC Region are also low. On March 18, 2011, the water levels in the C-23, C-24, and C-25 Canals measured 18.35, 18.36, and 15.1 feet NGVD, respectively. Groundwater levels in USGS wells STL-125, M-1048, M-1004, and M-1261 remain in the lowest 10th percentile for their periods of record. These

water levels are a concern because the principal source of recharge for surface and groundwater supplies in the UEC Region is rainfall.

22. The LEC Region relies upon the Water Conservation Areas ("WCAs") and Lake Okeechobee as primary and secondary water supply sources. These sources are projected to decline during the dry season.

23. The WCAs west of the LEC Region are relied upon as the primary source of water to the LEC during the dry season in order to provide groundwater recharge, saltwater intrusion protection, and recharge of public drinking water wellfields. Historically, deliveries have averaged up to 500 million gallons per day ("MGD") during the dry season, with increased deliveries in April and May. If the freshwater levels decline, a significant potential exists for saltwater intrusion into the LEC Region's surficial, freshwater aquifers.

24. Lake Okeechobee is a secondary source of water for the LEC Region during the dry season. Water from Lake Okeechobee is relied upon to prevent saltwater intrusion and recharge wellfields when water levels in the Biscayne aquifer and WCAs can no longer meet user demands. However, when water levels in Lake Okeechobee fall below 10.5 feet NGVD, it becomes difficult to provide water to the WCAs due to conveyance limitations in the regional system canals and evaporation of water during dry conditions.

25. As of March 21, 2011, the level of Lake Okeechobee was 11.68 feet NGVD. This is approximately 2.65 feet below the average water levels in Lake Okeechobee for this time of year. Lake Okeechobee water levels are within the water shortage management line set forth in Rule 40E-22.332, Fla. Admin. Code (Figure 22-

4). Water shortage restrictions have been imposed pursuant to Order No.: 2011-038-DAO-WS and water supply deliveries have been reduced. Therefore, water supply deliveries from Lake Okeechobee are not available to deliver to the WCAs.

26. This occurred because the normal wet season, June through October, failed to recharge the low lake levels in Lake Okeechobee. From June 1, 2010 to October 31, 2010, rainfall in the watershed basins recharging Lake Okeechobee was about 20% below average. Rainfall over Lake Okeechobee was 25% below average for the same time period.

27. Given La Niña weather conditions, the District's position analyses project that there is about a 65% chance, Lake Okeechobee will remain below 12.5 feet NGVD through end of 2011. If the Lake experiences persistent dry hydrologic conditions, which are experienced 25% of the time, then the Lake's level could decline to 9 .5 feet NGVD by June 1, 2011.

28. Water outflows from the WCAs to the LEC are also regulated by the Corps. The Corps' Water Control Manual for the WCAs and Everglades National Park sets regulatory floor elevations in the WCAs. The floor elevations identified in the regulation schedule are 14 feet NGVD for WCA-1, 10.5 feet NGVD for WCA-2, and 7.5 feet NGVD for WCA-3.

29. Pursuant to the WCA's regulation schedule, once a WCA regulatory floor elevation is exceeded water deliveries are restricted to the volume imported from secondary sources, such as Lake Okeechobee. If a secondary source is not available when a WCA level falls below the regulatory floor elevation, then water supply deliveries

to the coastal areas cannot be made from that WCA, unless the Corps approves a temporary deviation from the regulation schedule.

30. As of March 21, 2011, water levels in WCA-1, WCA-2A and WCA-3A marsh were 15.48, 11.40, and 8.76 feet. The level in the WCA-1 canal was 14.22 feet NGVD, only 0.22 feet above the floor elevation. The level in the canal in WCA- 2A was 10.76 feet NGVD, only 0.26 feet above the floor elevation. Finally, the water level in the WCA-3A canal was 7.85 feet NGVD, as measured on the headwater side of S-333, only 0.35 feet above the floor elevation.

31. Secondary deliveries to the WCAs from Lake Okeechobee are unavailable at this time given current Lake Okeechobee water levels and the imposition of Order No. 2011-038-DAO-WS.

32. Most USGS monitor wells in the LEC Region remain in the lowest 10th to 30th percentile for their periods of record. Wells located in or near Tequesta, Dania Beach, Hallandale Beach, North Miami, south Miami, and Homestead dropped below 2.0 ft NGVD, which is of concern to the District.

33. A number of minimum flows and levels ("MFLs") have been established in this region. Pursuant to Rule 40E-8.221, Fla. Admin. Code, minimum water levels have been established for the Biscayne aquifer and peat-forming and marl-forming wetlands within the Everglades.

34. Pursuant to Rule 40E-8.221(3)(b), Fla. Admin. Code, water levels within marl-forming wetlands located east and west of Shark River Slough, the Rocky Glades, and Taylor Slough within the Everglades National Park shall not fall 1.5 feet below the

ground surface, as measured at a key gauge, for one or more days during a period in which the water level has remained below ground for a minimum of ninety (90) days.

35. Pursuant to Rule 40E-8.221(3)(b), Fla. Admin. Code, water levels within peat-forming wetlands located within the Wildlife Management Areas, Water Conservation Areas, and Shark River Slough within Everglades National Park shall not fall 1.0 feet below the ground surface, as measured at a key gauge, for one or more days during a period in which the water level has remained below ground for a minimum of thirty (30) days.

36. As of March 21, 2011, one of the District's Everglades MFL monitoring gauges, identified as G-3273, maintained a water level of 3.9 feet NGVD. Results from this gauge location indicate that the MFL for marl-forming wetlands located within eastern Everglades National Park has been exceeded.

37. Everglades MFL monitoring gauges, identified as HoleyG, 3A-NE and 3A-NW, maintained water levels of 10.4, 9.3, and 9.7 feet NGVD, respectively. Results from these gauge locations indicate the MFL for peat-forming wetlands located within Holey Land Wildlife Management Area and WCA 3 and has been exceeded.

38. Finally, additional Everglades MFL monitoring gauges monitored by the District, identified as Rott.S, 3A_2, 3A_3, 3BS1W1, NP201, and NER62 (as reported at G-3576) maintained water levels of 11.8, 10.0, 8.9, 5.1, 6.1, and 5.0 feet NGVD, respectively. Results from these gauge locations indicate that the MFL for peat-forming wetlands located within Rottenberger Wildlife Management Area, WCA 3 and Everglades National Park will most likely be exceeded if conditions persist.

39. As of March 21, 2011, the District's Loxahatchee River monitoring gauge, identified as Lainhart Dam, maintained an average daily flow rate of 22.8 cfs. Results from this gauge indicate that the MFL criterion for the Northwest Fork of the Loxahatchee River has been exceeded.

40. In light of the above factors, District staff has reviewed the current conditions of the water resources, the present and anticipated demands, and the present and anticipated water supply. Given the downward trend in water level readings, the imposition of water shortage restrictions on golf course and landscape irrigation uses is necessary to avoid serious harm and equitably distribute available supplies.

ULTIMATE FACTS AND CONCLUSIONS OF LAW

41. The Governing Board has authority to adopt a water shortage plan to regulate the withdrawal and use of water and protect the water resources of the District. § 373.246, Fla. Stat. (2010).

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

43. The Governing Board may issue a water shortage warning calling for voluntary reductions in demand within a source prior to declaring a water shortage. Fla. Admin. Code R. 40E-21.231(3).

44. Rule 40E-21.271, Fla. Admin. Code, recognizes the restrictions contained in Part V of Chapter 40E-21, Fla. Admin. Code, 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, Fla. Admin. Code.

45. Rule 40E-21.401, Fla. Admin. Code, and permit conditions authorize the District to obtain data concerning monitoring of water usage.

46. Based on the cumulative assessment of surface and groundwater availability in the affected basins and climate forecasts, there is a significant potential that sufficient water will not be available to meet anticipated demands without mandatory restrictions on water usage within the affected Basins. The decline in surface and groundwater levels, the potential for further declines, and the present and projected water demands in the Basins, require the imposition of mandatory water shortage restrictions.

47. Considering the above Findings of Fact, it is necessary to impose restrictions in the affected Basins. The modified Phase I and Phase II restrictions identified in this Order are geared toward achieving the goal of a 15% and 30%, respectively, cutback in overall demand.

ORDER

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

48. A water shortage is hereby declared and Modified Phase I restrictions are hereby imposed on all golf course and Modified Phase II restrictions are hereby imposed on all landscape irrigation uses of surface water and groundwater within the area depicted on Composite Exhibit "A."

49. All golf course and landscape irrigation users previously subject to Order No.: 2010-206-DAO-WS shall be subject to the restrictions set forth in this Order.

50. The Town of Highland Beach in Palm Beach County shall not be subject to this Order due to 100 percent use of Floridan Aquifer water to serve the needs of all the users within its jurisdiction.

51. Golf course users located in Broward, Palm Beach, Miami-Dade, Monroe, St. Lucie, Martin, Okeechobee, Glades, Hendy, Lee, and Collier Counties shall implement a management plan that reduces total irrigation by 15% of their monthly allocation. The monthly allocation is derived from the AFSIRS calculation. Actual pumpage data shall be totaled on a weekly basis and reported to the District on a weekly basis through the District's water shortage webpage available at www.sfwmd.gov by noon every Monday for the preceding week. Compliance with the 15% cutback shall be evaluated on a monthly basis.

52. Landscape irrigation users located in Broward, Palm Beach, Miami-Dade, Monroe, St. Lucie, Martin, Okeechobee, Glades, Hendy, and Lee Counties shall be subject to the landscape irrigation restrictions set forth in Exhibit "B."

53. Landscape irrigation users within Collier County and the City of Naples shall be subject to the landscape irrigation restrictions set forth in Exhibit "C."

54. Landscape irrigation users within the City of Cape Coral shall be subject to the landscape irrigation restrictions set forth in Exhibit "D."

55. Landscape irrigation users located in the portions of Charlotte, Highlands, and Polk Counties within the District's boundaries shall be subject to the landscape irrigation restrictions set forth in Order SWF 2010-22 issued by the Southwest Florida Water Management District ("SWFWMD") on November 16, 2010, all orders extending Order SWF 2010-22, and any subsequent modifications, revisions, and/or increased

restrictions issued by the SWFWMD until this Order is rescinded. A copy of Order SWF 2010-22 is attached hereto as Exhibit "E."

56. Landscape irrigation users located in the portions of Orange and Osceola Counties within the District's boundaries shall be subject to the landscape irrigation provisions issued by the St. Johns River Water Management District (SJRWMD") as set forth in Rule 40C-2.042(2), Fla. Admin. Code, a copy of which is attached hereto as Exhibit "F," or any water shortage order issued by SJRWMD.

57. Landscape irrigation users located within the Reedy Creek Improvement District, an independent special district within portions of Orange and Osceola Counties, shall be subject to the landscape irrigation restrictions set forth in Exhibit "B."

58. Permitted water users are requested to continue submitting water usage monitoring data in accordance with permit conditions. The Director of the Water Use Regulation Division 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.

59. A user may request relief from this Order by filing an application for variance in accordance with Rule 40E-21.275, Fla. Admin. Code, but must conform to the water use restrictions until the Executive Director grants a temporary variance or the Governing Board grants a variance.

60. Any variance granted from this Order shall expire upon a declaration by the Governing Board that a water shortage in the affected areas no longer exists, rescinding this Order, or when a more restrictive water declaration is made in the affected areas (unless otherwise provided in such water shortage declaration).

61. The Executive Director 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. District staff will cooperate with the local governments in implementing such enforcement measures.

62. This Order imposing Modified Phase I Moderate Water Shortage Restrictions shall become effective on March 26, 2011 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), F.A.C., are present.

63. A Notice of Rights is attached hereto as Exhibit "G."

DONE AND SO ORDERED in West Palm Beach, Florida, on this 21 day of March 2011.

SOUTH FLORIDA WATER
MANAGEMENT DISTRICT
By its Executive Director

CAROL ANN WEHLE

GOVERNING BOARD OF SOUTH FLORIDA WATER MANAGEMENT DISTRICT
STATE OF FLORIDA
SEAL
Established 1949

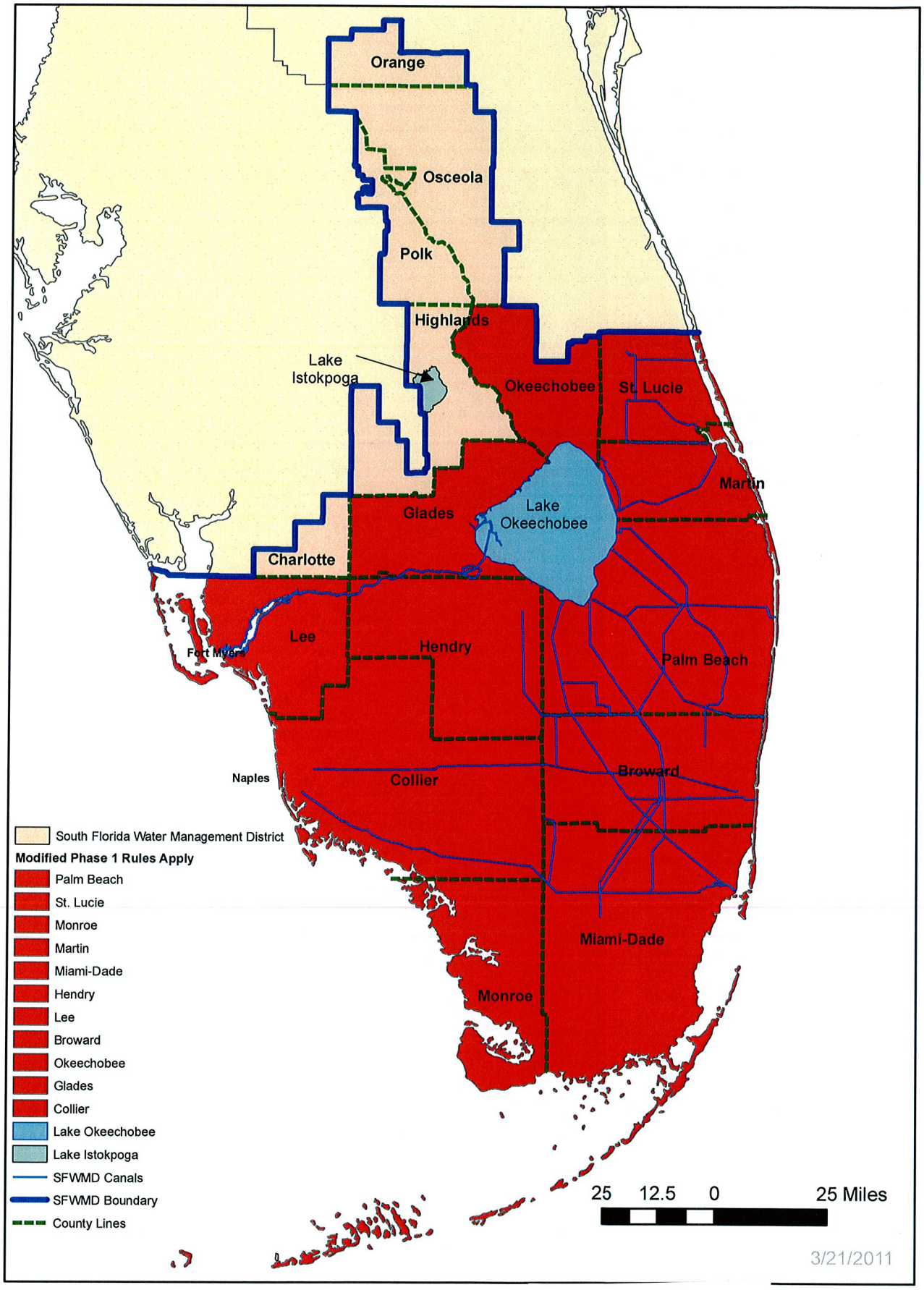
Attest:

District Clerk/Assistant Secretary
March 21, 2011

Legal Form Approved:

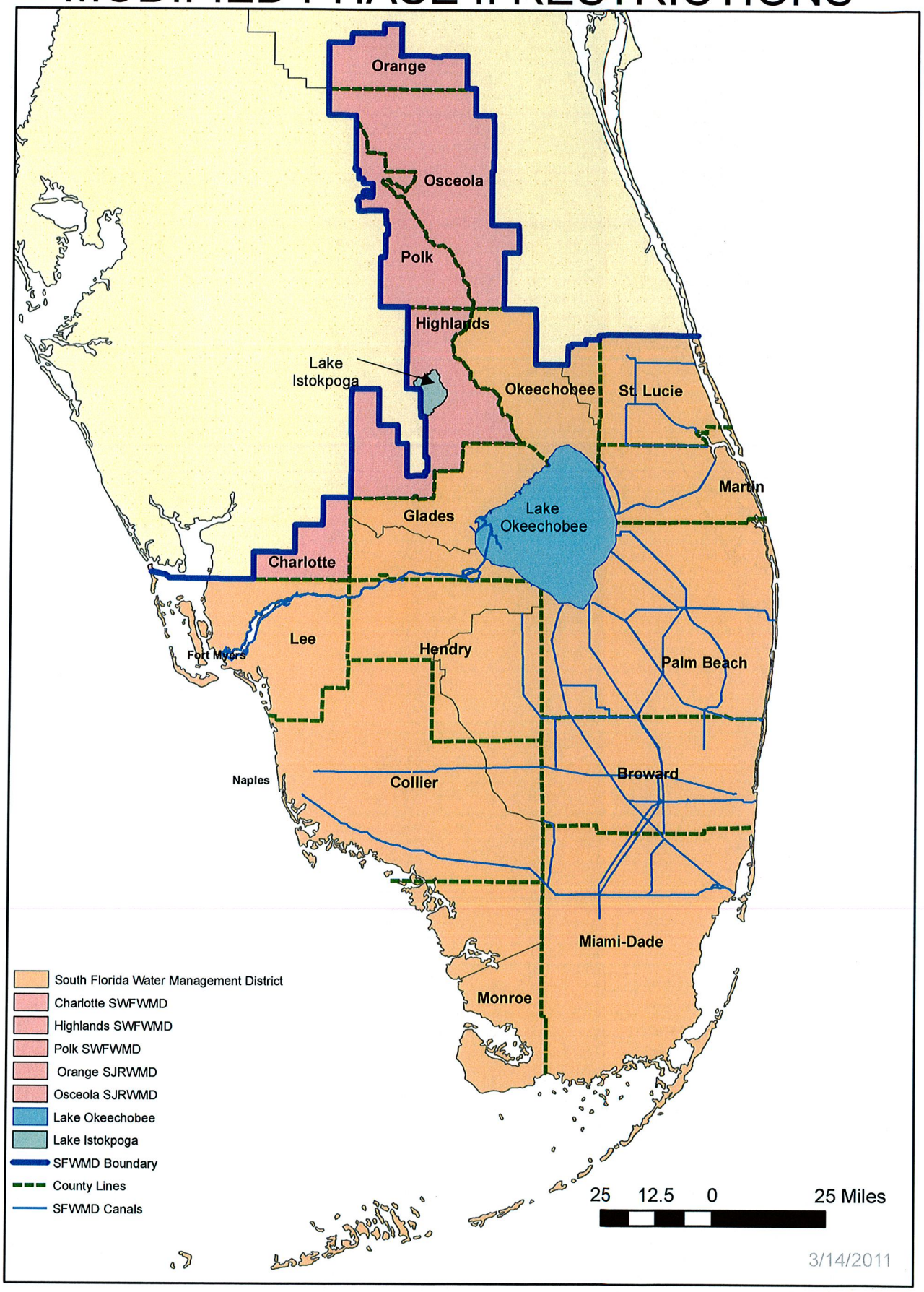
Jennifer Bokankowitz, Esq.

MODIFIED PHASE I GOLF COURSE WATER RESTRICTIONS



COMPOSITE
EXHIBIT A

MODIFIED PHASE II RESTRICTIONS



NOTE: LOSA, Indian Prairie and Lake Istokpoga Follow ORDER: 2010-206-DAO-WS as modified by 2010-214-DAO-WS

COMPOSITE

EXHIBIT A

MODIFIED PHASE II LANDSCAPE IRRIGATION RESTRICTIONS

1. Users conducting landscape irrigation with reclaimed water are not restricted.

2. Landscape irrigation is prohibited between the hours of 10:00 a.m. and 4:00 p.m., except as otherwise provided herein.

3. Irrigation of existing landscaping shall comply with the following provisions:

a. Even addresses, installations with irrigation systems that irrigate both even and odd addresses within the same zones, such as multi-family units and homeowners' associations, and rights-of-way or other locations with no address, shall have the opportunity to accomplish necessary landscape irrigation only on Thursday and Sunday.

b. Odd addresses shall have the opportunity to accomplish necessary landscape irrigation only on Wednesday and Saturday.

4. Irrigation of new landscaping shall comply with the following provisions:

a. On the day the new landscaping is installed, the new landscaping may be irrigated once without regard to the normally allowable watering days and times. Irrigation of the soil immediately prior to the installation of the new landscaping is also allowable without regard to the normal allowable watering days and times.

b. The ninety (90) day period begins the day the new landscaping is installed. The new landscaping shall be installed within a reasonable time from the date of purchase, which may be demonstrated with a dated receipt or invoice

c. Irrigation of new landscaping which has been in place for thirty (30) days or less may be accomplished on Monday, Tuesday, Wednesday, Thursday, Saturday, and Sunday.

Exhibit B

d. Irrigation of new landscaping which has been in place for thirty-one (31) to ninety (90) days may be accomplished on Monday, Wednesday, Thursday, and Saturday.

e. Irrigation of the new landscaping is limited to areas containing the new landscaping only. An entire zone of an irrigation system shall only be utilized for landscape irrigation under this paragraph if the zone in question is for an area that contains at least 50% new landscaping. If a zone contains less than 50% new landscaping, or if the new landscaping is in an area that will not typically be irrigated by an irrigation system, only the individual new plantings are eligible for additional irrigation under this paragraph. Targeted watering may be accomplished by low volume hand watering, or any appropriate method which isolates and waters only the new landscaping.

5. Landscape irrigation systems may be operated during restricted days and/or times for cleaning, maintenance, and repair purposes with an attendant on site in the area being tested. Landscape irrigation systems may routinely be operated for such purposes no more than once per week, and the run time for any one test should not exceed 10 minutes per zone.

6. Landscape irrigation for the purpose of watering-in fertilizers, insecticides, pesticides, fungicides and herbicides, where such watering-in is recommended by the manufacturer, or by federal, state or local law, or best management practices, shall be allowed under the following conditions:

a. Such watering-in shall be limited to one application unless the need for more than one application is stated in the directions for application specified by the manufacturer; and

b. Such watering-in shall be accomplished during normally allowable watering days and times set forth in Paragraphs 2 through 4, above, unless a professional licensed applicator has posted a temporary sign containing the date of application and the date(s) of needed watering-in activity.

7. Any plant material may be watered using low volume irrigation, micro-irrigation, low-volume hand watering methods, and rain barrels, cisterns, or other similar rain-harvesting devices without regard to the watering days or times allowed.

MODIFIED PHASE II LANDCAPE IRRIGATION RESTRICTIONS FOR USERS LOCATED IN COLLIER COUNTY AND CITY OF NAPLES

1. Users conducting landscape irrigation with reclaimed water are not restricted.

2. Landscape irrigation is prohibited between the hours of 8:00 a.m. and midnight, except as otherwise provided herein.

3. Irrigation of existing landscaping shall comply with the following provisions:

a. Even addresses, installations with irrigation systems that irrigate both even and odd addresses within the same zones, such as multi-family units and homeowners' associations, and rights-of-way or other locations with no address, shall have the opportunity to accomplish necessary landscape irrigation only on Thursday and Sunday.

b. Odd addresses shall have the opportunity to accomplish necessary landscape irrigation only on Wednesday and Saturday.

4. Irrigation of new landscaping shall comply with the following provisions:

a. New landscaping means those installations which have been in place for 60 days or less.

b. Irrigation may of new landscaping may be conducted Monday through Friday.

c. Irrigation of the new landscaping is limited to areas containing the new landscaping only. An entire zone of an irrigation system shall only be utilized for landscape irrigation under this paragraph if the zone in question is for an area that contains at least 50% new landscaping. If a zone contains less than 50% new landscaping, or if the new landscaping is in an area that will not typically be irrigated by

an irrigation system, only the individual new plantings are eligible for additional irrigation under this paragraph. Targeted watering may be accomplished by low volume hand watering, or any appropriate method which isolates and waters only the new landscaping.

5. Landscape irrigation systems may be operated during restricted days and/or times for cleaning, maintenance, and repair purposes with an attendant on site in the area being tested. Landscape irrigation systems may routinely be operated for such purposes no more than once per week, and the run time for any one test should not exceed 10 minutes per zone.

6. Landscape irrigation for the purpose of watering-in fertilizers, insecticides, pesticides, fungicides and herbicides, where such watering-in is recommended by the manufacturer, or by federal, state or local law, or best management practices, shall be allowed under the following conditions:

a. Such watering-in shall be limited to one application unless the need for more than one application is stated in the directions for application specified by the manufacturer; and

b. Such watering-in shall be accomplished during normally allowable watering days and times set forth in Paragraphs 2 through 4, above, unless a professional licensed applicator has posted a temporary sign containing the date of application and the date(s) of needed watering-in activity.

7. Any plant material may be watered using low volume irrigation, micro-irrigation, low-volume hand watering methods, and rain barrels, cisterns, or other similar rain-harvesting devices without regard to the watering days or times allowed.

MODIFIED PHASE II LANDSCAPE IRRIGATION RESTRICTIONS FOR USERS LOCATED IN THE CITY OF CAPE CORAL

1. Users conducting landscape irrigation with reclaimed water are not restricted.

2. Landscape irrigation is prohibited between the hours of 7:00 a.m. and 7:00 p.m., except as otherwise provided herein.

3. Irrigation of existing landscaping shall comply with the following provisions:

a. Even addresses, installations with irrigation systems that irrigate both even and odd addresses within the same zones, such as multi-family units and homeowners' associations, and rights-of-way or other locations with no address, shall have the opportunity to accomplish necessary landscape irrigation only on Thursday and Sunday.

b. Odd addresses shall have the opportunity to accomplish necessary landscape irrigation only on Wednesday and Saturday.

4. Irrigation of new landscaping shall comply with the following provisions:

a. New landscaping means those installations which have been in place for 30 days or less.

b. Irrigation may of new landscaping may be conducted Monday, Tuesday, Wednesday, Thursday, Saturday, and Sunday.

c. Irrigation of the new landscaping is limited to areas containing the new landscaping only. An entire zone of an irrigation system shall only be utilized for landscape irrigation under this paragraph if the zone in question is for an area that contains at least 50% new landscaping. If a zone contains less than 50% new landscaping, or if the new landscaping is in an area that will not typically be irrigated by

an irrigation system, only the individual new plantings are eligible for additional irrigation under this paragraph. Targeted watering may be accomplished by low volume hand watering, or any appropriate method which isolates and waters only the new landscaping.

5. Landscape irrigation systems may be operated during restricted days and/or times for cleaning, maintenance, and repair purposes with an attendant on site in the area being tested. Landscape irrigation systems may routinely be operated for such purposes no more than once per week, and the run time for any one test should not exceed 10 minutes per zone.

6. Landscape irrigation for the purpose of watering-in fertilizers, insecticides, pesticides, fungicides and herbicides, where such watering-in is recommended by the manufacturer, or by federal, state or local law, or best management practices, shall be allowed under the following conditions:

a. Such watering-in shall be limited to one application unless the need for more than one application is stated in the directions for application specified by the manufacturer; and

b. Such watering-in shall be accomplished during normally allowable watering days and times set forth in Paragraphs 2 through 4, above, unless a professional licensed applicator has posted a temporary sign containing the date of application and the date(s) of needed watering-in activity.

7. Any plant material may be watered using low volume irrigation, micro-irrigation, low-volume hand watering methods, and rain barrels, cisterns, or other similar rain-harvesting devices without regard to the watering days or times allowed.

SOUTHWEST FLORIDA WATER MANAGEMENT DISTRICT

IN RE:

DECLARATION OF WATER SHORTAGE ORDER SWF 2010-022

ORDER DECLARING WATER SHORTAGE

The Governing Board of the Southwest Florida Water Management District (District), during a public hearing held at its regularly schedule monthly meeting on November 16, 2010, at District Headquarters in Brooksville, Florida, received data and recommendations from District staff, and comment from the public, regarding hydrologic conditions and other pertinent facts regarding the declaration of a water shortage within the District. Based upon the testimony, data, staff recommendations and public comment, the Governing Board makes the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. Chapter 40D-21, Florida Administrative Code, is the District's Water Shortage Plan ("Plan").

2. The Plan specifies that the District will monitor certain Drought Indicators, including rainfall, groundwater levels and stream flows.

3. The Plan also specifies that the District will consider additional factors when determining whether to declare a water shortage and, if a water shortage will be declared, determining which phase of restrictions and other required actions should be implemented to respond to the water shortage event.

4. Drought Indicators and additional factors that the Governing Board considered for the northern counties of the District (Citrus, Hernando, Lake, Levy, Sumter and the portions of Marion County involving The Villages and the Town of Dunnellon) are summarized as follows:

a. **Rainfall**

i. As of November 12, 2010, 24-month moving sum of rainfall was registering at the 20th percentile in the northern counties, which is classified as "severely abnormal" in accordance with Table 21-1 in the Plan.

EXHIBIT E

ii. As of November 12, 2010, the six-month moving sum of rainfall was registering at the 11th percentile in the northern counties, which is classified as "severely abnormal" by the Plan and means that the District should consider the status of four national Drought Indicators.

b. **National Drought Indicators**

i. As of November 12, 2010, the Climate Prediction Center's three-month outlooks indicate that rainfall in the northern counties is expected to continue to be below normal for up to six months, which is classified as "severely abnormal" by the Plan.

ii. As of November 6, 2010, the Palmer Drought Index was -2.70 within the northern counties, which is classified as "severely abnormal" by the Plan.

iii. As of November 12, 2010, the Standard Precipitation Index was about -2.52 within the northern counties, which is classified as "critically abnormal" by the Plan.

iv. As of November 9, 2010, the U.S. Drought Monitor had a value of "D0" within the northern counties, which is classified as "moderately abnormal" by the Plan.

c. **Groundwater Levels**
As of November 8, 2010, the Aquifer Resource Indicator had a value of 15p within the northern counties but has only been below 16p for one week, which is classified as "severely abnormal" by the Plan.

d. **Stream Flows**

i. As of November 12, 2010, the 8-week moving average stream flow for the Withlacoochee River, as measured at the gage at Holder, was registering at 14th percentile (14p). This value is classified as "severely abnormal" by the Plan.

ii. As of November 12, 2010, the 7-day moving average stream flow for the Withlacoochee River, as measured at the gage at Holder, was registering at 8p. This value is classified as "extremely abnormal" by the Plan.

iii. As of November 12, 2010, the 7-day moving average stream flow for the Withlacoochee River, as measured at the gage at Trilby (upstream of Holder) was registering at 3p. This value is classified as "critically abnormal" by the Plan.

e. **Additional Factors**

Although the existence of multiple Drought Indicator values being classified as "extremely abnormal" or one Drought Indicator classified as "critically abnormal" means that the District could declare a Phase IV water shortage in the northern counties accordance with the Plan, the following factors partially abate the need for District action:

i. As of November 12, 2010, the twelve-month moving sum of rainfall in the northern counties was registering at the 46th percentile (46p), which is within the normal range of fluctuation (25p – 75p).

ii. The Withlacoochee River and other northern rivers are not used for public supply. As a result, low flow conditions are not an immediate public health, safety and welfare concern.

iii. Public supply water systems in the northern counties rely on groundwater. Although groundwater levels are below normal, there are currently no known drought-related public supply concerns.

iv. Unincorporated Hernando County and the City of Crystal River already follow once-per-week restrictions in accordance with local ordinances, reducing the need for the District to take action if the local water supply systems would experience drought-related problems.

v. Most of unincorporated Marion County and the entire City of Ocala follow restrictions established by the St. Johns River Water Management District in accordance with an Interagency Agreement between the two water management districts, further reducing the need for the District to take action if the local water supply systems would experience drought-related problems.

5. Drought Indicators and additional factors that the Governing Board considered for the central counties of the District (Hillsborough, Pasco, Pinellas and Polk) are summarized as follows:

a. **Rainfall**

i. As of November 12, 2010, the 24-month moving sum of rainfall in the central counties was registering at the 32nd percentile (32p), which is within the normal range of fluctuation (25p – 75p).

ii. As of November 12, 2010, the six-month moving sum of rainfall in the central counties was registering at the 15th percentile, which is classified as "severely abnormal" in accordance with Table 21-1 in the Plan and means that the District should consider the status of four national Drought Indicators.

b. National Drought Indicators

i. As of November 12, 2010, the Climate Prediction Center's three-month outlooks indicate that rainfall in the central counties is expected to continue to be below normal for up to six months, which is classified as "severely abnormal" by the Plan.

ii. As of November 6, 2010, the Palmer Drought Index was -1.72 within the central counties, which is classified as "moderately abnormal" by the Plan.

iii. As of November 12, 2010, the Standard Precipitation Index was -1.82 within the central counties, which is classified as "severely abnormal" by the Plan.

iv. As of November 9, 2010, the U.S. Drought Monitor had a value of "D0" within the central counties, which is classified as "moderately abnormal" by the Plan.

c. Groundwater Levels

As of November 8, 2010, the Aquifer Resource Indicator had a value of 29p within the central counties, which is within the normal range of fluctuation (25p – 75p).

d. Stream Flows

i. As of November 12, 2010, the 8-week moving average stream flow for the Hillsborough River, as measured at the gage at Zephyrhills, was registering at the 20th percentile (20p). This value is classified as "severely abnormal" by the Plan; however, the 7-day moving average for the same site was registering at 43p, which is within the normal range of fluctuation (25p – 75p).

ii. As of November 12, 2010, the 8-week moving average stream flow for the Alafia River, as measured at the gage at Lithia, was registering at 6p. This value is classified as "extremely abnormal" by the Plan; however, the 7-day average for the same site was registering at 31p, which is within the normal range of fluctuation.

iii. As of November 12, 2010, the 8-week moving average stream flow for the Peace River, as measured at the gage at Bartow, was registering at 8p. This value is classified as "extremely abnormal" by the Plan; furthermore, the 7-day moving average for the same site was registering at 10p, which is also classified as "extremely abnormal" by the Plan.

e. Additional Factors

Although the existence of multiple Drought Indicator values being classified as "extremely abnormal" or one Drought Indicator being classified as "critically

abnormal" means that the District could declare a Phase IV water shortage in accordance with the Plan, the following factors partially abate the need for District action:

i. As of November 12, 2010, the twelve-month moving sum of rainfall was registering at the 51st percentile (51p), which is within the normal range of fluctuation (25p – 75p).

ii. Other than the City of Tampa starting to use water from the Harney Canal to manage its reservoir level a month earlier than normal, there are no known drought-related concerns about the status of public supply water systems within the central counties.

6. Drought Indicators and additional factors that the Governing Board considered for the southern counties of the District (Charlotte, DeSoto, Hardee, Highlands, Manatee and Sarasota) are summarized as follows:

a. Rainfall

i. As of November 12, 2010, the 24-month moving sum of rainfall was registering at the 20th percentile, which is classified as "severely abnormal" in accordance with Table 21-1 in the Plan.

ii. As of November 12, 2010, the six-month moving sum of rainfall was registering at the 13th percentile, which is classified as "severely abnormal" by the Plan and means that the District should consider the status of four national Drought Indicators.

b. **National Drought Indicators**

i. As of November 12, 2010, the Climate Prediction Center's three-month outlooks indicate that rainfall in the southern counties is expected to continue to be below normal for up to six months, which is classified as "severely abnormal" by the Plan.

ii. As of November 6, 2010, the Palmer Drought Index was -1.72 within the southern counties, which is classified as "moderately abnormal" by the Plan.

iii. As of November 12, 2010, the Standard Precipitation Index was -1.82 within the southern counties, which is classified as "severely abnormal" by the Plan.

iv. As of November 9, 2010, the U.S. Drought Monitor had a value of "D0" within the southern counties, which is classified as "moderately abnormal" by the Plan.

c. **Groundwater Levels**
As of November 8, 2010, the Aquifer Resource Indicator had a value of 14p within the southern counties and has been below 16p for four weeks, so it is classified as "extremely abnormal" by the Plan.

d. **Stream Flows**

i. As of November 12, 2010, the 8-week moving average stream flow for the Peace River, as measured at the gage at Arcadia, was registering at the 12th percentile (12p). This value is classified as "severely abnormal" by the Plan.

ii. As of November 12, 2010, the 7-day moving average stream flow for the Peace River, as measured at the gage at Arcadia, was registering at 25p. This value is classified as "moderately abnormal" by the Plan.

iii. As of November 12, 2010, the 7-day moving average stream flow for the Peace River, as measured at the gage at Bartow (upstream of Arcadia), was registering at 10p. This value is classified as "extremely abnormal" by the Plan.

e. **Additional Factors**
Although the existence of multiple Drought Indicator values being classified as "extremely abnormal" or one Drought Indictor classified as "critically abnormal" means that the District could declare a Phase IV water shortage in accordance with the Plan, the following factors partially abate the need for District action:

i. As of November 12, 2010, the twelve-month moving sum of rainfall in the southern counties was registering at the 42nd percentile (42p), which is within the normal range of fluctuation (25p – 75p).

ii. There are no known drought-related concerns about the status of public supply water systems within the southern counties.

7. All groundwater and surface water sources throughout the District are currently affected by this water shortage event, to varying degrees. At this time the same phase of water shortage is advisable for all categories of water users in all parts of the District because all users are impacting the available sources and contributing to the potential for harm to the natural systems.

CONCLUSIONS OF LAW

8. The Governing Board of the District is duly authorized by Section 373.246(2), Florida Statutes (F.S.), and Chapter 40D-21, F.A.C., to issue Orders declaring the existence of a water shortage within all or part of the District and to impose such measures,

restrictions and other required actions as may be necessary to reduce demand on available water supplies.

9. County and city officials and all law enforcement authorities are required to enforce orders lawfully issued by the Executive Director pursuant to the Plan and Section 373.609, F.S.

ORDERED

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

10. A Phase I "Moderate Water Shortage" as defined in the Plan is declared for all ground and surface waters within the District's sixteen county area, excluding the portions of unincorporated Marion County and the city of Ocala that are addressed in an Interagency Agreement with the St. Johns River Water Management District.

11. Except as modified in paragraph 15 below (the paragraph ratifying local restrictions), Modified Phase I "Moderate Water Shortage" measures are hereby ordered for all categories of water users within the District's sixteen county area.

12. Effective December 1, 2010, the measures set forth in Exhibit A shall be in effect. These measures are those specified in Chapter 40D-21.601(4), F.A.C. and Chapter 40D-21.621, F.A.C., as modified by amendments to these sections of the Plan and associated definitions that were approved by the Governing Board on October 26, 2010.

13. A Fact Sheet summarizing the measures is attached as Exhibit B to this Order.

14. County and city officials and all law enforcement authorities shall enforce the Order when requested pursuant to the Plan and Section 373.609, F.S.

15. Local water use restrictions enacted prior to this Order by county and city officials affecting their local jurisdictions ("Local Actions") that are at least as restrictive as Modified Phase I measures are hereby ratified and are authorized to continue in effect according to their terms. In the event that the provision of a Local Action is less restrictive than this Order, this Order shall supersede that provision of the Local Action, unless the county or city officials obtain a variance or waiver from this Order from the District.

16. This order shall expire on July 31, 2011, unless extended or rescinded by Governing Board or Executive Director action on or before that date.

DONE AND ORDERED in Hernando County, Florida, on this 16th day of November 2010.

SOUTHWEST FLORIDA WATER MANAGEMENT DISTRICT

By: _____
David L. Moore
Executive Director

Filed this 16th day of November, 2010

_____
Agency Clerk

Approved as to Legal Form and Content

_____
Attorney

NOTICE OF RIGHTS

Persons to whom this Order is directed, or whose substantial interests are affected, may petition for an administrative hearing in accordance with Sections 120.569 and 120.57, F.S., and Chapter 28-106, Florida Administrative Code (F.A.C.). A request for a hearing must: 1) explain how the petitioner's or other person's substantial interests will be affected by the District's action; 2) state all material facts disputed by the petitioner or other person, or state that there are no disputed facts; and 3) otherwise comply with Chapter 28-106, F.A.C.

A request for hearing must be filed with and received by the Agency Clerk of the District at District Headquarters, 2379 Broad Street, Brooksville, Florida 34604-6899 within twenty-one (21) days of receipt of this notice. Receipt is deemed to be the fifth day after the date on which this notice is deposited in the United States mail. Failure to file a request for hearing within this time period shall constitute a waiver of any right you or any other person may have to request a hearing under Sections 120.569 and 120.57, F.S.

Mediation pursuant to Section 120.573, F.S., and Rule 28-106.111, F.A.C., to settle an administrative dispute regarding the District's action in this matter is not available prior to the filing of a request for hearing.

In accordance with subsection 120.569(1), F.S., the following additional administrative or judicial review may be available.

A party who is adversely affected by final agency action may seek review of the action in the appropriate District Court of Appeal pursuant to Section 120.68, F.S., by filing a Notice of Appeal pursuant to Rule 9.110, Florida Rules of Appellate Procedure, within thirty (30) days after the rendering of the final action by the District.

EXHIBIT A

Part I - DEFINITIONS

(1) Except as otherwise noted below, all terms used herein shall have the same meaning as defined in Rule 40D-22.101, F.A.C.

(2) "Agricultural Uses" are water uses associated with Agriculture as defined in Rule 40D-22.101, F.A.C. This specifically includes the irrigation of vegetables, fruits and other plants grown for human consumption at a residence or community garden, provided the plants are irrigated separately from any lawn or other landscape plant material. In order for irrigation of a fruit tree at a residence or community garden to be considered an Agricultural Use, the irrigation shall not be applied to any lawn or other landscape plant material.

(3) "Commercial and Industrial Uses" are water uses integral to the production of goods and services, including power generation and cogeneration; phosphate mining and benefication; chemical manufacturing; limestone, sand and gravel mining; cement, concrete and other aggregate products manufacturing; perishable foods processing and packing; restaurants, hotels and other hospitality businesses; retail and wholesale establishments; and educational institutions.

(4) "Critical Water Shortage" is the alternative name for a Phase IV Water Shortage.

(5) "Drought Indicator" is a quantified assessment of the condition of a water supply or resource.

(6) "Drought Condition Level" is the level of drought or other water shortage being experienced, based on the status of Drought Indicators. There are four levels: Moderate, Severe, Extreme and Critical.

(7) "Essential Uses" is the classification category for water uses associated with maintaining public health, safety, or welfare, including the operation of public water supply systems, public waste water systems, sanitation facilities, military facilities, power generation facilities, hospitals and other medical facilities, medical equipment and fire suppression equipment.

(8) "Extreme Water Shortage" is the alternative name for a Phase III Water Shortage.

(9) "High-Use Single Family" means a single-family residential potable water customer that uses 15,000 gallons per month or more unless an alternative threshold is approved pursuant to 40D-21.631(3)(b)2.c.

(10) "Indoor Uses" are water uses associated with domestic and similar non-domestic needs. Domestic needs include drinking, bathing, cooking, cleaning and necessary sanitary purposes in a household environment. Similar non-domestic needs include drinking, bathing and necessary sanitary activities outside of the household environment, such as in customer or employee restrooms.

(11) "Landscape Uses" are water uses related to the establishment and maintenance of Turfgrass, trees and other plant material. This specifically includes all Lawns and Landscape at homes and other residences, commercial or industrial buildings, parks, recreational areas, public rights-of-way, medians and other public and private properties. Within this classification, the District maintains the subclassifications of Cemeteries, Golf Courses, Driving Ranges and Other

Athletic Play Areas as defined in Rule 40D-22.101, F.A.C., to address the unique Turfgrass needs associated with these uses.

(12) "Mobile Equipment" means any public, private or commercial automobile, truck, trailer, railroad car, camper, boat, tractor, or any other type of similar equipment.

(13) "Moderate Water Shortage" is the alternative name for a Phase I Water Shortage.

(14) "Other Uses" are all other water uses not specifically included in other Use Classes, including augmentation of natural or man-made surface water bodies for aesthetic, recreational or habitat value; ornamental ponds, water fountains and other aesthetic water features; environmental restoration or enhancement; swimming pools and other water-based non-commercial recreation; cleaning or Pressure Washing of structures, driveways, sidewalks and other impervious surfaces; and wetting roads and other surfaces for dust control or fire suppression when required by federal, state or local standards.

(15) "Permittee" is the holder of a Water Use Permit issued pursuant to Chapter 40D-2, F.A.C.

(16) "Phase I Water Shortage" is also referred to as "Moderate Water Shortage" and is described in Rule 40D-21.621, F.A.C.

(17) "Phase II Water Shortage" is also referred to as "Severe Water Shortage" and is described in Rule 40D-21.631, F.A.C.

(18) "Phase III Water Shortage" is also referred to as "Extreme Water Shortage" and is described in Rule 40D-21.641, F.A.C.

(19) "Phase IV Water Shortage" is also referred to as "Critical Water Shortage" and is described in Rule 40D-21.651, F.A.C.

(20) "Plan" means the plan set forth in this Chapter, including restrictions and other required actions as authorized by sections 373.246 and 373.175, F.S.

(21) "Pressure Washing" means the use of pressurized water for cleaning purposes, by means of equipment accepted by industry standards. Industry standards specifically include a self-canceling or automatic nozzle, water pressure at a minimum of 1,000 p.s.i. (pounds per square inch) and water volume at a maximum of five (5) gallons per minute. Professional-grade equipment operates at a water pressure of at least 2,900 p.s.i.

(22) "Public Supply Water System" and "public supply water system" for the purpose of this rule means either a "community water system" or a "wholesale system" as those terms are defined by Rule 62-550.200, Florida Administrative Code, whether a particular system is managed by a water supply authority, local government (municipality, county, or division or enterprise of a municipality or county) or nongovernmental entity (such as a development-specific, investor-owned, non-profit or special district facility). For the purpose of this rule, an entity which submeters a master-metered connection to a public supply water system (such as a third party submetering units in an apartment complex) is not considered to be a public supply water system.

(23) "Severe Water Shortage" is the alternative name for a Phase II Water Shortage.

(24) "Source Class" means the specified water resource from which a user is obtaining water either directly or indirectly. Source Classes within the District are identified in Rule 40D-21.531, F.A.C.

(25) "Supplemental Irrigation" is the water applied to established plant material to satisfy water needs not met by rainfall.

(26) "Use Class" means the category describing the purpose for which the user is utilizing water. Use Classes within the District are identified in Rule 40D-21.541, F.A.C.

(27) "Water Shortage" means a drought or other situation within all or part of the District, for which the Governing Board has determined that there is insufficient water to meet the present and anticipated needs of users, or conditions are such that there is a need to require temporary reduction in water use within a particular area to protect one or more Source Class or the water resource from serious harm.

(28) "Water Shortage Emergency" means a Water Shortage for which a determination has been made that the powers exercised under Part II of this Plan are not sufficient to protect the public health, safety, or welfare; the health of livestock and other animals, fish or aquatic life; or other Essential Uses.

(29) "Water Supply Authority" and "water supply authority" for the purpose of this rule is the term defined and described in Section 373.713, Florida Statutes.

(30) "Water Utility" and "water utility" for the purpose of this rule means the same thing as "Public Supply Water System" (defined above).

(31) "Water Utility Uses" are water uses associated with maintaining and operating a public water supply system, whether the system is managed by a regional water supply authority, local government agency, or private entity. These uses include water utility activities such as flushing lines and maintenance of treatment processes but do not include water distributed by the system for customer use.

(32) "Wholesale-Only System" or "wholesale-only system" for the purpose of this rule is a "wholesale system" that is not also a "community water system" as those terms are defined by Rule 62-550.200, F.A.C. In other words, it is a water supply authority or other "wholesale system" which only delivers water to another public water supply system.

Part II SPECIFIC MEASURES

General.

(1) Purpose – this Part sets forth specific water use restrictions and other required actions available to the District for implementation upon a declaration of a Water Shortage or Water Shortage Emergency.

(2) The water use restrictions and other required actions specified within this Plan may be modified by the Board or Executive Director to address the specific Water Shortage or Water Shortage Emergency event. The selected combination of water use restrictions and other required actions shall be summarized in the notice(s) of the water shortage declaration, as specified above in Rule 40D-21.275, F.A.C.

(3) Water use restrictions and other required actions may be established for each Use Class and various subcategories, as appropriate. All water users have a duty to keep informed about the water use restrictions and other required actions applicable to them.

(4) In addition to the restrictions specified in this part, all wasteful and unnecessary water use is prohibited regardless of the phase of Water Shortage. Wasteful and unnecessary water use includes the water use activities listed in Rule 40D-22.201(2), F.A.C., and any of the following:

(a) Allowing water to be dispersed without any practical purpose to the water user;

(b) Allowing water to be dispersed in a grossly inefficient manner, regardless of the type of water use; and

(c) Allowing water to be dispersed to accomplish a purpose for which water use is unnecessary or which can be readily accomplished through alternative methods without water use.

Phase I: Moderate Water Shortage.

(1) A Phase I Water Shortage is a hydrologic or climatic condition in which at least one regional or local Drought Indicator has a moderately abnormal value, such that conditions warrant the District alerting the general public and the District ordering water utilities and other water users to review and implement internal procedures needed to fully implement restrictions and other required actions during a Phase II, Phase III, Phase IV or emergency declaration. The following measures shall remain in effect during a Phase I Water Shortage unless otherwise provided in an order implementing a Phase I Water Shortage. Except as set forth in this Rule 40D-21.621, F.A.C., lawn irrigation and other uses of water remain subject to applicable provisions of Rule 40D-22, F.A.C. (the District's Year-Round Water Conservation Measures) and any applicable variances thereto issued by the District.

(2) Indoor Uses. Indoor Uses should be voluntarily reduced.

(3) Essential Uses

(a) Fire Fighting & Other First-Responder Activities

1. Fire hydrant testing shall not be restricted. Each fire hydrant testing agency, whether a local government unit or other entity, shall review and update existing procedures or develop procedures through which it can address inquiries from the District and citizens about specific testing activity. At a minimum, these procedures shall include either the use of an on-site sign containing the name and telephone number of the hydrant testing agency or the establishment and promotion of a telephone number of a hotline that the District and citizens can call to question testing activity at a specific location. A marked vehicle remaining on-site during the activity may be used in lieu of a free-standing sign.

2. Fire suppression and fire prevention activities shall not be restricted. Each fire fighting agency shall, and each local government shall direct its fire department to, review and revise as necessary its inventory of primary and back-up water sources.

3. Maintenance of fire fighting facilities and other emergency equipment is allowed as needed. This maintenance specifically includes the washing of fire engines, law enforcement vehicles and other emergency Mobile Equipment. This maintenance specifically requires the use of a trigger (self-canceling) nozzle on any garden-type hose used for cleaning or other maintenance purposes in accordance with Rule 40D-21.601(4).

(b) Water Utility Use

The following water use restrictions or other required actions shall apply to all Water Utility Uses, as indicated:

1. Each public supply water system with residential, commercial, industrial, or irrigation customers, working with local code enforcement and local law enforcement agencies as necessary, shall review and update or develop, then implement, local enforcement procedures for year-round water conservation measures and Water Shortage

restrictions, including but not limited to mechanisms to provide the enforcement assistance required by Rule 40D-21.621(3)(b)2, F.A.C., in accordance with Section 373.609, F.S. These procedures shall also specifically include an ability to issue a citation without first needing to issue a warning, should the District declare a Phase III or Phase IV water shortage. If the water utility is a nongovernmental entity, or if a governmental agency other than the water utility has responsibility for enforcement of year-round water conservation measures and the District's Water Shortage orders, the procedures shall specifically include a mechanism for the public supply water system to coordinate with the applicable local enforcement agency to provide the required assistance.

2. Each public supply water system with residential, commercial, industrial or irrigation customers shall provide, directly or through the applicable local enforcement agency, the following enforcement assistance to the District:

a. Immediate information regarding possible violations involving a Permittee, so that District staff can take the lead on such investigations.

b. Response, as appropriate based on the quantity and quality of details provided to the water utility, to enforcement referrals made by the District regarding address-specific or location specific violation complaints in accordance with Rule 40D-22.401(2). This shall involve, where necessary, a site investigation on the day of week and at the time of day indicated for each referral. This shall also include having the legal mechanisms necessary to issue warnings, citations, and post-citation proceedings to recover unpaid penalties and associated costs.

c. Monthly transmittal of enforcement activity data, such as the number of warnings and citations issued, in a reporting format provided by District.

d. Within 60 days of the Water Shortage declaration and if subsequently requested by the District, contact information for the District's use in providing enforcement referrals and soliciting required enforcement data.

3. Each public supply water system shall institute or accelerate other water conservation efforts which can help manage demand during the Water Shortage declaration. These efforts shall include:

a. Customer messaging for all customers, including wholesale users (other water utilities), informing those customers about the current Water Shortage declaration, describing how the water utility's primary and back-up water supplies are affected, and promoting any ongoing water conservation projects offered by the water utility (such as appliance rebates or irrigation inspections) that will assist customers in their efforts to immediately reduce water consumption. If a water supply authority or other public supply water system serves only wholesale users (other water utilities), then communication with all wholesale users satisfies this requirement. The messaging method(s) shall be determined by the public supply water system.

b. Water utility operational practices. At a minimum, these practices shall address line flushing and disinfection. Potable water, sanitary sewer and reclaimed water line flushing and disinfection shall not be restricted. However, each water utility shall develop and implement procedures through which it can address inquiries from the District and citizens about specific flushing and disinfection activity. At a minimum, these procedures shall include the use of either an on-site sign containing the name and telephone number of the agency conducting the flushing activity or establishment and promotion of a telephone hotline that customers and other concerned citizens can call to question activity at a

specific location. A marked vehicle remaining on–site during the activity may be used in lieu of a sign. If the water utility is also responsible for fire hydrant testing, these processes will also satisfy the requirement in Rule 40D-21.621(3)(a).

4. The notice specified in Rule 40D-21.275 (3), F.A.C., that is sent to public supply Permittees will summarize the requirements listed above.

(c) Medical and Health Use

The use of water for medical purposes and protection of public health, safety and welfare shall not be restricted.

(4) Commercial and Industrial Use

In addition to the requirements of any applicable Water Use Permit, the following restrictions and other response mechanisms shall apply to all Commercial and Industrial Use, as appropriate:

(a) All commercial and industrial Permittees shall review current water conservation programs to assure that permit-required elements have been fully implemented and to determine what additional demand management measures could be reasonably employed, should resource conditions further deteriorate.

(b) Commercial and industrial use shall continue to be restricted by any applicable Water Use Permit.

(5) Agricultural Use

(a) All Agricultural Permittees shall review current water conservation programs to assure that permit-required elements have been fully implemented and to determine what additional demand management measures could be temporarily employed, should resource conditions further deteriorate.

(b) The following restrictions on water use shall apply, as appropriate:

1. Agriculture shall comply with the allowable watering hours, exemptions from those hours and other provisions specified in Rule 40D-22, F.A.C. These provisions expressly include exemptions for irrigation needed for plant protection, including prevention of frost and freeze or heat damage and to water-in chemicals. Additionally, any Agricultural water user with a variance from Rule 40D-22, F.A.C., to follow a published BMPs document, shall continue to comply with the variance. In the context of allowable watering hours, Agricultural Uses of center pivot and traveling gun technologies shall have the same exemptions as Low-Volume Irrigation.

2. Agricultural Use shall continue to be restricted by any applicable Water Use Permit.

(6) Landscape Use

(a) All Permittees authorized to use water for Landscape Use shall review current water conservation programs to assure that permit-required elements have been fully implemented and to determine what additional demand management measures could be temporarily employed, should resource conditions further deteriorate.

(b) Lawn and Landscaping, Golf Course, Driving Range and Other Athletic Play Area use shall continue to comply with all applicable provisions of Rule 40D-22. These provisions include an establishment period of allowable extra water applications for new plant material and a separate day-of-week exemption for Low-Volume Irrigation technology (such as

microirrigation or handwatering) to be used on any plant material other than turfgrass which requires frequent irrigation beyond the standard establishment period.

(c) Each property owner or manager shall voluntarily reduce water use and prepare for possible worsening conditions. At a minimum, each irrigation system shall be tested and repaired or adjusted as necessary in accordance with Rule 40D-22.201(3)(b) to address leaks, sprinkler misalignment, inappropriately mixed heads, needed controller adjustments and other sources of irrigation inefficiencies.

(d) An example copy of the notice specified in Rule 40D-21.275(3), F.A.C., shall be sent to the Florida Department of Financial Services – Bureau of Cemetery Services and will include a summary of the requirements listed above.

(7) Other Uses

(a) All Permittees authorized to use water for purposes not described above shall review current water conservation programs to assure that permit-required elements have been fully implemented and to determine what additional demand management measures could be temporarily employed, should resource conditions further deteriorate.

(b) The following restrictions on water use shall apply to each other water use activity, as appropriate:

1. Lawn and Landscaping Use associated with any activity shall comply with applicable provisions of Rule 40D-22. This specifically includes an allowance for the operation of an irrigation system during otherwise restricted days or hours for the discharge of water from air conditioning units or similar water-dependent devices.

2. Recycling or secondary use of water shall occur, to the maximum extent practicable. For example, a child's water slide or other recreational water device can be positioned so that it discharges onto a turfgrass area that requires irrigation.

3. Water use necessary to the activity, such as rinsing as part of the process of Mobile Equipment cleaning is restricted only as provided in Rule 40D-21.601(2). For example, this means that rinsing is allowed if done with the use of a trigger (self-canceling) nozzle on any garden-type hose used for cleaning or other maintenance purposes.

EXHIBIT B

SUMMARY FACT SHEET

Modified Phase I (Moderate Water Shortage) Restrictions

A "Phase I" declaration means that conditions are below normal and warrant alerting the general public and ordering water utilities and other water users to review and implement procedures as a means of preparing for possible additional action.

ALL WATER USERS:

- Reduce indoor water use on a voluntary basis.
- Test and repair or adjust each irrigation system to address broken pipes and other leaks, damaged or tilted sprinkler heads, and other sources of water waste.
- Continue to follow applicable year-round water conservation measures (the District's maximum of twice-per-week lawn watering schedule and other provisions).*
- Continue to follow any applicable Water Use Permit, including a review of current water conservation programs (1) to assure that permit-required elements have been fully implemented and (2) to determine what additional demand management measures could be reasonably employed, should resource conditions further deteriorate.

ESSENTIAL USES, INLCUDING WATER UTILITIES:

- Each fire hydrant testing agency: review and update procedures for addressing District and citizen inquiries.
- Each fire fighting agency: review and revise inventory of primary and back-up water sources.
- Each water utility** shall:
  1. Review and implement (working with code enforcement and law enforcement agencies as necessary) procedures for enforcing year-round water conservation measures and water shortage restrictions. ***
  2. Provide (directly or through the applicable local agency) the following enforcement assistance: immediate information to the District regarding possible violations involving a Water Use Permit holder, response to enforcement referrals made by the District (including, based on the quantity and quality of details provided, a site investigation when necessary), and the legal mechanisms necessary to pursue violations (issue warnings, citations, and post-citation proceedings for penalties and associated costs). ***
  3. Transmit enforcement activity data (number of warnings and citations issued) on a monthly basis. ***
  4. Within 60 days of the Water Shortage declaration, provide contact information for the District's use in referring enforcement cases and soliciting required enforcement data. ***
  5. Customer messaging which informs about the current Water Shortage declaration, describes how primary and back-up water supplies are affected, and promotes ongoing water conservation projects.
  6. Develop and implement procedures through which it can address inquiries from the District and citizens about specific line flushing and disinfection activity.

* Stricter local ordinances may instead apply, so be sure to check with your city, county or water utility.

** A water utility is any "community water system" or a "wholesale system" as defined by Rule 62-550.200, FAC, whether a particular system is managed by a water supply authority, local government (municipality, county, or division or enterprise of a municipality or county) or nongovernmental entity.

*** Does not apply to wholesale-only systems, such as a regional water supply authority.

SPECIAL INFORMATION:

If you have any questions about how these restrictions apply to your situation, please call 1-800-848-0499 during normal business hours or send an inquiry to Water.Restrictions@WaterMatters.org.

40C-2.042 General Permit by Rule.

A general consumptive use permit by rule is hereby established for consumptive uses of water listed below that do not meet or exceed any permitting threshold under subsection 40C-2.041(1), F.A.C., except as provided in subsection 40C-2.042(8), F.A.C. However, this rule shall not apply to domestic uses of water by individuals, i.e., water used for the household purposes of drinking, bathing, cooking or sanitation. Persons using or proposing to use water in a manner not authorized under this rule, must obtain a permit pursuant to Chapter 40C-2, 40C-20, or 40C-22, F.A.C.

(1) The Board hereby grants a general permit to each person located within the District to use, withdraw or divert water to irrigate agricultural crops, nursery plants, cemeteries, golf courses and recreational areas such as playgrounds, football, baseball, and soccer fields, provided the irrigation does not occur between the hours of 10:00 a.m. and 4:00 p.m. daily, and provided the amount of water used is limited to only that necessary for efficient utilization. Such water use shall be subject to the following exceptions:

(a) Irrigation using a micro-spray, micro-jet, drip, or bubbler irrigation system is allowed anytime.

(b) The use of water for irrigation from a reclaimed water system is allowed anytime. For the purpose of this paragraph, a reclaimed water system includes systems in which the primary source is reclaimed water, which may or may not be supplemented by water from another source during peak demand periods.

(c) The use of recycled water from wet detention treatment ponds for irrigation is allowed anytime provided the ponds are not augmented from any ground or off-site surface water, or public supply sources.

(d) Irrigation is allowed at any time of day for one 30-day period following planting of agricultural crops or nursery stock, provided that the irrigation is limited to the minimum amount necessary for crop or plant establishment. Irrigation of newly planted, seeded or sprigged cemeteries, golf course greens, tees, fairways and primary roughs, and recreational areas such as playgrounds, football, baseball and soccer fields is allowed at any time of day for one 60-day period.

(e) Watering in of chemicals, including insecticides, pesticides, fertilizers, fungicides, and herbicides when required by law, the manufacturer, or best management practices is allowed any time of day within 24 hours of application. Watering in of chemicals shall not exceed 1/4 inch of water per application except as otherwise required by law, the manufacturer, or best management practices.

(f) Irrigation systems may be operated any time of day for maintenance and repair purposes not to exceed 20 minutes per hour per irrigation zone.

(g) Irrigation of agricultural crops by seepage systems which regulate off-site discharges through the use of water control structures is allowed anytime, provided the discharge does not overtop the control structure by more than one-half inch, there is no discharge between 1:00 p.m. and 7:00 p.m. unless associated with a storm event, and the structure is well maintained.

(h) The use of water to protect agricultural crops and nursery plants, except ferns, from frost or freeze damage is allowed when freezing temperatures or frost are predicted by an official weather forecasting service.

(i) The use of water to protect ferns from frost or freeze damage is allowed when the "wet bulb" temperature, as measured by a "wet bulb" thermometer at the site of application, is 34 degrees Fahrenheit or less. Freeze protection must cease when temperatures rise above 40 degrees Fahrenheit.

(j) The use of water to protect agricultural crops, nursery plants and golf course turf from heat stress damage is allowed anytime, provided the watering does not exceed ten minutes per hour per irrigation zone.

(k) Irrigation of agricultural crops by traveling volume guns which require manual repositioning is allowed anytime.

(l) Irrigation using a hand-held hose equipped with an automatic shut-off nozzle is allowed anytime.

(m) Discharge of water from a water-to-air air conditioning unit or other water dependent cooling system is not limited by this permit.

(2)(a) The Board hereby grants a general permit to each person located within the District to use, withdraw or divert water for landscape irrigation, provided landscape irrigation occurs in accordance with the provisions of subsection 40C-2.042(2), F.A.C., and provided the amount of water used is limited to only that necessary for efficient utilization. For the purpose of this rule, "landscape irrigation" means the outside watering of plants in a landscape such as shrubbery, trees, lawns, grass, ground covers, plants, vines, gardens and other such flora that are situated in such diverse locations as residential areas, public, commercial, and industrial establishments, and public medians and rights-of-way, but it does not include agricultural crops, nursery plants, cemeteries, golf course greens, tees, fairways, primary roughs, and vegetation associated with recreational areas such as playgrounds, football, baseball and soccer fields. For the purpose of this rule, the terms "residential landscape irrigation" and "non-residential landscape irrigation" are defined in this paragraph (a) as follows. "Residential landscape irrigation" means the irrigation of landscape

associated with any housing unit having sanitary and kitchen facilities designed to accommodate one or more residents, including multiple housing units and mobile homes. "Non-residential landscape irrigation" means the irrigation of landscape not included within the definition of "residential landscape irrigation," such as that associated with public, commercial and industrial property, including commercial or transient housing units, hotel and motel units, and public medians and rights-of-way. For the purpose of this rule, "address" means the "house number" of the physical location of a specific property. This excludes post office box numbers. If a lot number in a mobile home park or similar community is used by the U.S. Postal Services to determine a delivery location, the lot number shall be the property's address. An "even numbered address" means an address ending in the numbers 0, 2, 4, 6, 8 or letters A-M. An "odd numbered address" means an address ending in the numbers 1, 3, 5, 7, 9 or the letters N-Z.

1. When Daylight Savings Time is in effect, landscape irrigation shall occur in accordance with the following irrigation schedule:

a. Residential landscape irrigation at odd numbered addresses or no address may occur only on Wednesday and Saturday and shall not occur between 10:00 a.m. and 4:00 p.m.; and

b. Residential landscape irrigation at even numbered addresses may occur only on Thursday and Sunday and shall not occur between 10:00 a.m. and 4:00 p.m.; and

c. Non-residential landscape irrigation may occur only on Tuesday and Friday and shall not occur between 10:00 a.m. and 4:00 p.m.; and

d. No more than 3/4 inch of water may be applied per irrigation zone on each day that irrigation occurs, and in no event shall irrigation occur for more than 1 hour per irrigation zone on each day that irrigation occurs.

2. When Eastern Standard Time is in effect, landscape irrigation shall occur only in accordance with the following irrigation schedule:

a. Residential landscape irrigation at odd numbered addresses or no address may occur only on Saturday and shall not occur between 10:00 a.m. and 4:00 p.m.; and

b. Residential landscape irrigation at even numbered addresses may occur only on Sunday and shall not occur between 10:00 a.m. and 4:00 p.m.; and

c. Non-residential landscape irrigation may occur only on Tuesday and shall not occur between 10:00 a.m. and 4:00 p.m.; and

d. No more than 3/4 inch of water may be applied per irrigation zone on each day that irrigation occurs, and in no event shall irrigation occur for more than 1 hour per irrigation zone on each day that irrigation occurs.

3. Landscape irrigation shall be subject to the following exceptions:

a. Irrigation using a micro-spray, micro-jet, drip, or bubbler irrigation system is allowed anytime.

b. Irrigation of new landscape is allowed at any time of day on any day for the initial 30 days and every other day for the next 30 days for a total of one 60-day period, provided that the irrigation is limited to the minimum amount necessary for such landscape establishment.

c. Watering in of chemicals, including insecticides, pesticides, fertilizers, fungicides, and herbicides when required by law, the manufacturer, or best management practices is allowed at any time of day on any day within 24 hours of application. Watering in of chemicals shall not exceed 1/4 inch of water per application except as otherwise required by law, the manufacturer, or best management practices.

d. Irrigation systems may be operated at any time of day on any day for maintenance and repair purposes not to exceed 20 minutes per hour per irrigation zone.

e. Irrigation using a hand-held hose equipped with an automatic shut-off nozzle is allowed at any time of day on any day.

f. Discharge of water from a water-to-air air conditioning unit or other water dependent cooling system is not limited by this permit.

g. The use of water from a reclaimed water system is allowed anytime. For the purpose of this paragraph, a reclaimed water system includes systems in which the primary source is reclaimed water, which may or may not be supplemented from another source during peak demand periods.

h. The use of recycled water from wet detention treatment ponds for irrigation is allowed anytime provided the ponds are not augmented from any ground or off-site surface water, or public supply sources.

4. When reclaimed water is available, the use of a private irrigation well for landscape irrigation is not authorized under subsection 40C-2.042(2), F.A.C. Reclaimed water is deemed available when reclaimed water is provided by a utility through a point of connection.

5. Any person who irrigates landscape with an automatic lawn sprinkler system installed after May 1, 1991, shall install, maintain and operate a rain sensor device or switch that overrides the irrigation system when adequate rainfall has occurred.

(b)1. A local government is strongly encouraged to enforce paragraph 40C-2.042(2)(a), F.A.C., within its jurisdiction by adopting a landscape irrigation ordinance that incorporates each of the provisions set forth in paragraph 40C-2.042(2)(a), F.A.C.

2. Where a local government has adopted a landscape irrigation ordinance, if the strict application of the specified day of week schedule would lead to unreasonable or unfair results in particular instances, the local government may grant a variance from the specific day or days for landscape irrigation identified in subparagraph 40C-2.042(2)(a)1. and 2., F.A.C., provided that the applicant demonstrates with particularity that compliance with the schedule of days for landscape irrigation will result in a substantial economic, health or other hardship on the applicant requesting the variance or those served by the applicant. Where a contiguous property is divided into different zones, a variance may be granted hereunder so that each zone may be irrigated on different days than other zones of the property. However, no single zone may be irrigated more than 2 days a week when Daylight Savings Time is in effect and no more than 1 day per week when Eastern Standard Time is in effect. Local governments shall not grant a variance from any other provision of this rule.

3. At least 30 days prior to the adoption of an ordinance to enforce paragraph 40C-2.042(2)(a), F.A.C., the local government shall provide a copy of the proposed ordinance to the District.

(c) A person proposing to use water for landscape irrigation where factors establish the need for irrigation to occur in a manner other than that authorized in subsection 40C-2.042(2), F.A.C., may submit an application for a Standard General Consumptive Use Permit pursuant to Chapter 40C-20, F.A.C., using form 40C-2-1082-2. Standard General Consumptive Use Permit for Landscape Irrigation, form number 40C-2-1082-2, effective 3-8-09, is hereby incorporated by reference. This permit application is limited to including no more than 25 nearby properties within a common plan of development. If a development consists of more than one phase or section, the 25 properties must be located within a single phase or section. A person seeking authorization to irrigate more than 1 additional day than that authorized by subsection 40C-2.042(2), F.A.C., must apply for a Standard General Consumptive Use Permit pursuant to Chapter 40C-20, F.A.C., using form 40C-2-1082-1.

(3) The Board hereby grants a general permit for all aquacultural consumptive uses of water located within the District provided the containment or impoundment facility utilized to cultivate the aquacultural product has no off-site surface water discharge and an aerator is used to add oxygen to the facility when necessary. Such water use is limited to the amount necessary to accomplish average expected production. The use of reclaimed water within an aquacultural facility shall not be subject to these restrictions provided appropriate signs are placed on the property to inform the general public and District enforcement personnel of such use.

(4) The Board hereby grants a general permit for all existing and proposed ornamental and aerating fountains within the District, provided the same water is recirculated, there is no off-site discharge and the fountain is properly installed, maintained and operated to ensure that a minimal amount of water is used. Non-recirculating fountains in existence on 7-23-91 shall be retrofitted to meet the requirements of this subsection by 7-23-93.

(5) The Board hereby grants a general permit to each person located within the District to use water to create a containment or impoundment facility solely for aesthetic purposes, provided the containment or impoundment facility is not augmented thereafter from any ground or off-site surface water source.

(6) The Board hereby grants a general permit to each person located within the District to use water for the augmentation of any pond which is 1/2 acre or smaller in size, provided the following conditions are met:

(a) The water for augmentation shall be withdrawn from a well with an inside diameter of the largest permanent water bearing casing of no more than 2 inches;

(b) Augmentation of the water level must not occur if the pond is discharging offsite, except that augmentation may occur to flush the pond no more than two times per year; and

(c) Augmentation of the water level in the pond must not occur above the average water table condition for the site.

(7) The Board hereby grants a general permit to each person located within the District to withdraw or divert water for uses other than those identified in subsections (1)-(6) provided the amount is limited to only that necessary for efficient utilization.

(8) The Board hereby grants a general permit to each person located within the District to withdraw groundwater from a well solely to irrigate a total of one acre or less of landscape on contiguous property, provided the withdrawal does not meet or exceed any thresholds of paragraphs 40C-2.041(1)(a)-(c), F.A.C. This permit is subject to all the provisions in paragraph 40C-2.042(2)(a), F.A.C. When reclaimed water is available, the use of a private irrigation well for landscape irrigation is not authorized under this subsection. Reclaimed water is deemed available when reclaimed water is provided by a utility through a point of connection.

Specific Authority 373.044, 373.109, 373.113, 373.118, 373.171 FS. Law Implemented 373.019(6), 373.109, 373.118, 373.219, 373.223, 373.250, 373.609, 373.62 FS. History–New 7-23-91, Amended 1-7-99, 2-15-06, 3-8-09.

Exhibit F

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 <u>not</u> 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.