

## SOUTHWEST FLORIDA WATER MANAGEMENT DISTRICT

IN RE:

DECLARATION OF WATER SHORTAGE  
IN HILLSBOROUGH, PASCO AND PINELLAS COUNTIES

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### WATER SHORTAGE ORDER NO. SWF 2013-006

During a public hearing held at its regularly scheduled monthly meeting on February 26, 2013 at the District's Sarasota Service Office in Sarasota, Florida, the Governing Board of the Southwest Florida Water Management District (District) received data and recommendations from District staff and provided opportunity for comment from the public regarding hydrologic conditions and other pertinent facts regarding the intensification of an ongoing water shortage within a portion of 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. Water Shortage Order No. SWF 2010-022, issued in accordance with the District's Water Shortage Plan (Plan), adopted as Chapter 40D-21, Florida Administrative Code (F.A.C.), has been in effect since November 16, 2010. The Order was extended on July 26, 2011, October 25, 2011, February 28, 2012, June 26, 2012 and December 18, 2012 and is set to expire on July 31, 2013.
2. The Plan specifies that the District will monitor certain water resource conditions as Drought Indicators, including rainfall, groundwater levels and stream flows.
3. As of January 31, 2013, the central region of the District (an area encompassing Hillsborough, Pasco, Pinellas and Polk counties) is experiencing a 12-month moving sum of rainfall that registers at the 30<sup>th</sup> percentile of expected rainfall, a decline from the 43<sup>rd</sup> percentile the previous month.
4. As of February 18, 2013, the Aquifer Resource Indicator for the central region was at the 35<sup>th</sup> percentile of expected levels, a decline from the 48<sup>th</sup> percentile the previous month.
5. As of February 18, 2013, the 8-week moving average stream flow for the Hillsborough River, as measured at the gage at Zephyrhills, was at the 30<sup>th</sup> percentile, a decline from the 48<sup>th</sup> percentile the previous month. The 7-day moving average stream flow was at the 22<sup>nd</sup> percentile, a decline from the 37<sup>th</sup> percentile the previous month. The Plan classifies these conditions as moderately abnormal.
6. As of February 18, 2013, the 8-week moving average stream flow for the Alafia River, as measured at the gage at Lithia, was at the 14<sup>th</sup> percentile, a decline from the 27<sup>th</sup> percentile the

previous month. The 7-day moving average stream flow was at the 12<sup>th</sup> percentile, a decline from the 17<sup>th</sup> percentile the previous month. The Plan classifies these conditions as severely abnormal.

7. The combination of Drought Indicator values indicated above suggests that, in accordance with Table 21-2 in the Plan, declaration of a Phase III Water Shortage Order should be considered.

8. The Plan also specifies that the District will consider additional factors when determining which phase of restrictions and other required actions should be implemented.

9. Pertinent additional factors in Hillsborough, Pasco and Pinellas counties include:

- a. January rainfall in the central region was significantly below normal, registering at only the 7<sup>th</sup> percentile.
- b. February rainfall in the central region, to date, is also below normal (only registering at the 20<sup>th</sup> percentile).
- c. Rainfall forecasts for the central region over next 30 days are also below normal, and forecasts for the spring months are currently uncertain.
- d. The majority of citizens in Hillsborough, Pasco and Pinellas counties are served by water utilities which receive or are capable of receiving water from Tampa Bay Water or one of its six member governments.
- e. On February 18, 2013, Tampa Bay Water's daily production to meet potable water demand was 161.28 million gallons (MG).
- f. On February 18, 2013, Tampa Bay Water's C.W. Bill Young Regional Reservoir remained off-line due to renovation; there was no surface water production from the Alafia River or the Tampa Bypass Canal due to low river flows; the desalination plant production was at 19.96 MG; the City of Tampa was providing 1.14 MG from its reservoir; and ground water production was 140.18 MG.
- g. On February 18, 2013, withdrawals authorized pursuant to Tampa Bay Water's Water Use Permit No. 20011771.000 (Consolidated Permit) provided 110.51 MG of the 140.18 MG in ground water production.
- h. To date, withdrawals pursuant to the Consolidated Permit wellfields have averaged 102.25 million gallons per day (MGD) during February 2013, up from 87.28 MGD in January.
- i. The February 2013 withdrawals pursuant to the Consolidated Permit result in a 12-month moving average of approximately 83.11 MGD, which is less than the 90 MGD permit limit but about 4 MGD higher than the same time last year.
- j. On February 18, 2013, Tampa Bay Water's Board of Directors noted that operation of its supply system had shifted to Phase III of its local water shortage mitigation plan and voted to request that the District impose additional restrictions. Once-per-week lawn irrigation restrictions were amongst the measures discussed. A written follow-

up request for the next appropriate water shortage phase was sent to the District on February 21, 2013.

10. All groundwater and surface water sources throughout Hillsborough, Pasco and Pinellas counties are currently affected by this water shortage event to varying degrees.

11. Lawn irrigation and other specific categories of outdoor water uses typically, but not exclusively served by water utilities, are currently capable of contributing the most potential harm to the natural systems.

#### CONCLUSIONS OF LAW

12. The Governing Board of the District is 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.

13. It is the duty of county and city officials and all law enforcement authorities to assist the Governing Board in the enforcement of the provisions of this Order pursuant to Section 373.609, F.S. and Rule 40D-21.421, F.A.C.

#### ORDERED

THEREFORE, based upon the foregoing findings of fact and conclusions of law, it is hereby ORDERED:

14. The Phase III water shortage restrictions specifically listed in "Exhibit A" shall go into effect throughout Hillsborough, Pasco and Pinellas counties as of March 13, 2013.

15. These Phase III restrictions shall remain in effect through July 31, 2013 unless further extended, modified or rescinded by Governing Board action prior to that date.

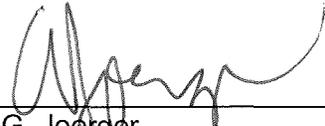
16. In the event that the Governing Board or Executive Director declares an additional Water Shortage Order in any portion of the District, the stricter provision of any such additional Order shall supersede the corresponding provision of this Order.

17. Except as modified herein, all other terms and conditions of Water Shortage Order No. SWF 2010-022 shall remain in full force and effect.

DONE AND ORDERED in Sarasota County, Florida, on this 26<sup>th</sup> day of February 2013.

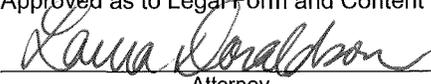
SOUTHWEST FLORIDA WATER  
MANAGEMENT DISTRICT

By:   
H. Paul Senft  
Governing Board Chair Director

Attest:  
By:   
Albert G. Joerger  
Governing Board Secretary

Filed this 27<sup>th</sup> day  
of February, 2013.

  
Agency Clerk

Approved as to Legal Form and Content  
  
Attorney

## **NOTICE OF RIGHTS**

Persons 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”**  
**Select Phase III “Extreme Water Shortage” Provisions from Rule 40D-21.641, F.A.C.**

**Excerpts from 40D-21.641 (all other water uses remain subject to Water Shortage Order No. SWF 2010-022).**

(1) A Phase III Water Shortage is a hydrologic or climatic condition in which multiple regional Drought Indicators have severely abnormal values, or a local Drought Indicator for a specific public supply has an extremely abnormal value, such that conditions warrant temporary minimization of unnecessary water use and/or preparation for supply augmentation. The following measures shall be in effect during a Phase III Water Shortage unless otherwise provided in the order implementing a Phase III Water Shortage.

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

(3) (b) **Water Utility Use.** In addition to the requirements of the applicable Water Use Permit, the following restrictions and other required actions shall apply to all Water Utility Uses, as appropriate:

1. Plan for supplementation or replacement of primary potable water supplies, including coordination with any applicable regional water supply authority or other public water supply system and coordination with District staff to request any appropriate emergency order.

2. Each public supply water system, except wholesale-only systems, shall provide, directly or through the appropriate local agency, the following enforcement assistance:

a. Ongoing implementation of all provisions of paragraph 40D-21.631(3)(b), F.A.C., including response, as needed, to enforcement referrals made by the District and violation complaints made by members of the general public.

b. Compliance monitoring, as appropriate, in portions of the service area where violation complaints or identified High-Use Single Family accounts appear to be concentrated. At a minimum, this shall include the use of either night-time enforcement patrols on at least a once-per-week basis or automatic meter reading technology to detect extra lawn watering.

c. Issuance of a citation, without needing to first issue a warning, in response to any violation that occurs more than 14 days after the effective date of a Phase III Water Shortage order declaration. Warnings are authorized in lieu of citations if the violation is not witnessed or otherwise confirmed by the local enforcement agency’s employee or authorized agent.

(4) **Commercial and Industrial Use** Follow requirements of applicable water use permit except for lawn and landscape irrigation. Lawn and landscape use is separately regulated for the purpose of this chapter and is subject to the lawn and landscape use restrictions and other required actions of the applicable Water Shortage declaration. Paragraph 40D-21.641(6)(c), F.A.C., contains the lawn and landscape use restrictions and other required actions for a Phase III declaration.

(4) (i) Restaurants and other food serving establishments shall serve water only upon request.

(5) **Agricultural Uses** Follow requirements of applicable water use permit except for lawn and landscape irrigation. Lawn and landscape use is separately regulated for the purpose of this chapter and is subject to the lawn and landscape use restrictions and other required actions of the applicable Water Shortage declaration. Paragraph 40D-21.641(6)(c), F.A.C., contains the lawn and landscape use restrictions and other required actions for a Phase III declaration.

(6) (a) **Golf Courses and Driving Ranges** Follow requirements of applicable water use permit except for lawn and landscape irrigation. Lawn and landscape use is separately regulated for the purpose of this chapter and is subject to the lawn and landscape use restrictions and other required actions of the applicable Water Shortage declaration. Paragraph 40D-21.641(6)(c), F.A.C., contains the lawn and landscape use restrictions and other required actions for a Phase III declaration.

(6) (b) **Other Athletic Play Areas** Follow requirements of applicable water use permit except for lawn and landscape irrigation. Lawn and landscape use is separately regulated for the purpose of this chapter and is subject to the lawn and landscape use restrictions and other required actions of the applicable Water Shortage declaration. Paragraph 40D-21.641(6)(c), F.A.C., contains the lawn and landscape use restrictions and other required actions for the Phase III declaration.

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(6) (c) **Lawn and Landscaping Use, including Cemeteries.** In addition to the requirements of the applicable Water Use Permit, the following water use restrictions and other required actions shall apply to all Lawn and Landscaping Use, including Cemeteries, as appropriate:

1. Each Permittee shall comply with all of its Water Use Permit requirements and terms. Those Permittees located within the Southern Water Use Caution Area with the ability to earn and expend “Water Conservation Credits” shall continue to do so pursuant to Rule 40D-2.621, F.A.C., and the associated Basis of Review section, which is incorporated in Rule 40D-2.091, F.A.C.

2. Eliminate off-site discharge to the extent practicable.

3. Recycle water to the extent practicable.

4. Suspend clean-up requiring water use, except for the minimum required to protect efficiency of the operation and prevent damage to equipment.

5. Suspend the washing of lawn mowers and other mobile equipment, except for the minimum necessary to meet health and safety needs or as otherwise required by published BMPs, such as the spread of Turfgrass disease.

6. Maximize the use of the least restricted Source Class to which there is access.

7. Eliminate unnecessary uses and take appropriate actions to avoid water use increases.

8. Limit New Plant Establishment as follows:

a. A 60-day establishment period is applicable as set forth in sub-subparagraphs b.-d. below.

b. On days 1-30, the New Plant Material may be irrigated any day of the week as needed.

c. On days 31-60, irrigation of the New Plant material shall occur only on three days a week. During this portion of the establishment period:

i. Even Addresses shall only water New Plant Material on Tuesdays, Thursday and/or Sunday

ii. Odd Addresses shall only water New Plant Material on Monday, Wednesday and/or Saturday.

iii. Rights-of-way, common areas and other locations without discernable addresses shall only water New Plant Material on Sunday, Tuesday and/or Friday.

iv. Cemeteries and other properties two acres in size or larger may instead maintain a written schedule of establishment period watering.

d. Except for the day of installation and sprig propagation, this extra watering must only occur during the allowable hours of the day.

e. The irrigation of any non-lawn plant material which requires frequent irrigation beyond the establishment period exemption provided in sub-subparagraphs a.-d. above shall employ Low-Volume Irrigation technology.

9. Limit Supplemental Irrigation (normal watering) to the hours of 12:00 a.m. to 8:00 a.m. or 6:00 p.m. to 12:00 a.m. Properties less than one acre in size or with fewer than 11 irrigation zones shall use only one of the two available watering times.

10. Supplemental irrigation accomplished by microirrigation, handwatering or other low volume technology shall only occur during the hours of 12:00 a.m. to 8:00 a.m. or 6:00 p.m. to 12:00 a.m.

11. Limit Supplemental Irrigation (“normal watering”) to a maximum of only one application per week during all months that the Water Shortage declaration is in effect. This watering shall be in accordance with the following schedule:

a. Addresses ending in 0 or 1 may water on Monday.

b. Addresses ending with a 2 or 3, on Tuesday.

c. Addresses ending with a 4 or 5, on Wednesday.

d. Addresses ending with a 6 or 7, on Thursday.

e. Addresses ending with an 8 or 9 and locations with a mix of addresses, or for which an address cannot be determined (such as common areas associated with a subdivision), on Friday.

f. Cemeteries and other properties greater than 2 acres in size that have a special irrigation schedule in accordance with paragraph 40D-22.201(4)(c), F.A.C., or properties regardless of size that have a special irrigation schedule pursuant to provisions of a variance from Chapter 40D-22, F.A.C., shall only water each section of property on the first day of the week already assigned to it. For example, a section of the property assigned a “Monday and Thursday” schedule shall only water on Monday.

g. This one application per week limitation does not apply to the use of microirrigation, handwatering or other low volume technology when used to water flower beds, shrubs or other non-turfgrass plant material.

## EXHIBIT "A"

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12. If core aerification or Vertical Mowing (also sometimes referred to as verticutting) is conducted, follow the applicable watering schedule. The extra watering allowance for such activity normally provided in paragraph 40D-22.201(3)(f), F.A.C., is not applicable.

13. If Spot Treatment or Syringing is conducted, follow the applicable water schedule. The extra watering allowance normally provided for in paragraph 40D-22.201(3)(e), F.A.C., is not applicable.

14. Except as otherwise noted herein, all applicable exemptions and other provisions of Chapter 40D-22, F.A.C., shall be in effect.

15. The property owner or manager shall, upon request, provide a receipt or other proof of qualification for the New Plant Establishment period or other claimed exemption.

(7) (b) **Aesthetic use.** Aesthetic use includes the use of water in fountains, waterfalls and other artistic water features:

1. If an aesthetic use also provides a necessary water quality benefit, such as aeration of a stormwater pond, it may be operated as necessary.

2. If an aesthetic use either involves a pond or other catchment area with a volume of less than 100 gallons or meets one of the following criteria, it may be operated as necessary:

a. The feature provides necessary aeration for pet fish, such as in a koi pond.

b. The feature is an integral part of the circulation system for a swimming pool.

c. The feature is in a pond or other catchment area augmented exclusively by reclaimed water, seawater, brackish bay or intercoastal water, air conditioning condensate or other byproducts of an allowable activity.

3. If an aesthetic use is also intended as an interactive recreational use, such as operation of a water play area for children, commercial and institutional users may engage in that activity in accordance with paragraph 40D-21.631(7)(c), F.A.C., In this context, commercial and institutional users specifically include mobile entertainment businesses, events sponsored by public agencies or non-profit organizations, and permanent devices maintained to pool and spa health standards. Water slides and other portable devices, other than those operated by commercial or institutional users, may only be used on an allowable watering day for the location involved.

4. All other aesthetic uses shall be limited to four hours a day, and the user shall select and post the normal hours of operation.

(7) (c) **Recreation use** shall comply with subsection 40D-21.631(7), F.A.C. [See below]

(7) (d) **Water Body Augmentation:**

1. Augmentation shall be limited to those circumstances indicated in subsection 40D-21.631(7), F.A.C. [See below]

2. Other augmentation, including augmentation of those water bodies for which the District has established minimum levels or guidance levels, is prohibited unless part of a District-authorized minimum flow or level recovery strategy.

(7) (f) **Mobile Equipment Washing:**

1. Commercial car washes, hand detailing operations and similar establishments shall comply with subsection 40D-21.641(4), F.A.C.

2. Car wash fundraisers held on behalf of non-profit organizations are prohibited, except for one-day events that were scheduled prior to the date of the Phase III Water Shortage declaration.

3. Washing of fire trucks and other emergency vehicles is allowed in accordance with paragraph 40D-21.641(3)(a), F.A.C.

4. Rinsing of boats and flushing of boat engines is allowed after each use when needed to remove salt water or to prevent the transportation of exotic plant or animal material.

5. Cleaning agricultural vehicles in accordance with canker abatement procedures, animal husbandry practices and other activities endorsed by the University of Florida's Institute of Food and Agricultural Sciences and the United States Department of Agriculture is allowed, as necessary.

6. The washing of fire engines and other emergency Mobile Equipment, such as ambulances and law enforcement vehicles, remains subject to subparagraph 40D-21.631(3)(a)3., F.A.C.

7. Other than as described above, car, truck and other Mobile Equipment washing shall be accomplished using low volume methods only, such as with a hand-held hose equipped with a trigger (self-canceling) nozzle and shall be restricted to only one

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washing a week. This one washing a week shall only occur on the allowable lawn watering day associated with the address at which the activity occurs.

(7) (g) **No person or entity**, for example, a homeowner association or property manager, shall enforce any deed restrictions or other community standards which are inconsistent with the Water Shortage declaration. This specifically includes that the person or entity responsible for enforcement will suspend any requirement to replace plant material to meet aesthetic standards.

#### Excerpts from Rule 40D-21.631, F.A.C.

[associated with with Phase III restrictions for emergency mobile equipment, recreation, and water body augmentation]

(3) Essential Uses.

(a) Fire Fighting & Other First-Responder Activities.

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 subsection 40D-21.601(4), F.A.C.

(4) Commercial and Industrial Use. [referenced for commercial car washes and hand-detailing businesses]

(a) Each user whose use is governed by a commercial or industrial Water Use Permit shall continue to comply with all permit requirements and terms.

(b) Each user whose use is not governed by a Water Use Permit shall implement the following demand management measures as appropriate:

1. Reduce off-site discharge to the extent practicable;
2. Recycle water to the extent practicable;
3. Reduce clean-up requiring water use to the minimum required to protect efficiency of the operation and prevent damage to equipment;
5. Maximize the use of the least restricted Source Class to which there is access;
7. Water use necessary to the activity, such as that consumed in a manufacturing process, shall not be otherwise restricted.

(7) (c) Recreation Area Use.

1. All pools shall be maintained in a manner that minimizes the need for make-up water. This shall include the prompt repair of leaks, optimum scheduling of backwash filtration and the use of shade or covers to reduce evaporation.

2. Commercial and institutional uses of water for recreational purposes shall comply with subsection 40D-21.631(4), F.A.C.

3. Residential and other non-commercial uses of water for recreational purposes shall be reduced to the maximum extent practicable. For example:

a. Use of a sprinkler or sprinkler-like device on a Lawn for recreational purposes shall be restricted to the watering day(s), watering times and horticulturally necessary amounts for the address involved.

b. Use of a wading pool, water slide, or other child-oriented recreation device shall include discharge or emptying onto a Lawn or Landscape area that requires irrigation.

(7) (d) Water Body Augmentation. Augmentation of a pond or other water body shall be limited to the following circumstances:

1. As required by a Water Use Permit or Environmental Resource Permit, typically for environmental mitigation purposes.
2. The minimum necessary to maintain and preserve the structural integrity of a newly constructed or recently altered pond.
3. The minimum needed to maintain and preserve habitat for native fish and wildlife.
4. Where lake levels are below the lowest minimum level or guidance level, as applicable, established for that lake by the District.