

SOUTHWEST FLORIDA WATER MANAGEMENT DISTRICT

IN RE:

DECLARATION OF WATER SHORTAGE
IN CHARLOTTE, DESOTO, HARDEE,
HIGHLANDS, HILLSBOROUGH, MANATEE,
PASCO, PINELLAS, AND SARASOTA COUNTIES

WATER SHORTAGE ORDER NO. SWF 20-017

During a public hearing held at its regularly scheduled meeting on April 28, 2020 at the Southwest Florida Water Management District's (District) Headquarters in Brooksville, Florida, the District's Governing Board received data and recommendations from District staff and provided opportunity for public comment regarding hydrologic conditions and other pertinent facts regarding a developing water shortage within a portion of the District. Based upon testimony, data, staff recommendations and public comment, the Governing Board makes the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. The District's Water Shortage Plan (Plan), adopted as Chapter 40D-21, Florida Administrative Code (F.A.C.), specifies that the District will collect water resource data and water demand data to evaluate Drought Indicators, current regional lake levels, current and recent U.S. Drought Monitor values, current precipitation outlooks, and public supply storage status.
2. As of April 16, 2020, Regional Drought Indicators throughout the District have declined compared to the previous month.
3. As of April 16, 2020, one Drought Indicator within the District's central counties is classified as "Moderately Abnormal" in accordance with Table 21-2 of the Plan. Specifically, the 7-day average stream flow for the Alafia River, as measured at the Lithia gage, was at the 13th percentile. March 2020 rainfall in the District's central counties was at the 1st percentile, and only 18% of expected rain for the month of April has been received as of April 15. Based upon this Drought Indicator information, Hillsborough, Pasco, and Pinellas Counties are currently experiencing a Moderate Drought Condition Level, in accordance with Table 21-2 of the Plan.
4. As of April 16, 2020, two drought indicators within the District's southern counties are classified as "Severely Abnormal" in accordance with Table 21-2 of the Plan. Specifically, the 12-month moving sum for rainfall in the District's southern counties was at the 20th percentile, and the 7-day average streamflow for the Peace River, as measured at the Arcadia gage, was also at the 19th percentile. March 2020 rainfall in the

District's southern counties was at the 1st percentile, and only 14% of expected rain for the month of April has been received as of April 15. Based upon this Drought Indicator information, Charlotte, DeSoto, Hardee, Highlands, Manatee, and Sarasota Counties are currently experiencing an Extreme Drought Condition Level, in accordance with Table 21-2 of the Plan.

5. As of April 14, 2020, the U.S. Drought Monitor shows Pinellas County as being in "moderate" drought conditions, and Hillsborough, Pasco and most of Polk County as being in "severe" drought conditions. In the District's southern counties, the U.S. Drought Monitor shows Charlotte, DeSoto and Highlands Counties as being in "moderate" drought, Manatee and parts of Hardee/Sarasota Counties as being in "severe" drought.

6. Due to the factors described above, circumstances warrant that the District alert the general public, local governments, water utilities, and other water users that hydrologic conditions are deteriorating and additional measures may be necessary if conditions deteriorate further.

CONCLUSIONS OF LAW

7. Pursuant to Section 373.246(2), Florida Statutes (F.S.), the Governing Board by order may declare the existence of a Water Shortage within all or part of the District when insufficient water is or will be available to meet the present and anticipated requirements of the users or when conditions are such as to require temporary reduction in total use within the area to protect water resources from serious harm.

8. Section 373.246(3), F.S., provides that, in accordance with the Plan, the Governing Board may impose such restrictions as may be necessary to protect the water resources of the area from serious harm and to restore them to their previous condition.

9. The Plan requires the District to assign a Water Shortage Phase based upon consideration of the following factors:

- a. Drought Indicators and Drought Condition Levels;
- b. Current regional lake levels, current and recent U.S. Drought Monitor values, current precipitation outlooks, and public supply storage status;
- c. Seasonal characterizations of collected data;
- d. The relative impact of withdrawals used to supply various categories of water uses on the affected Source Class(es) and any specific water body for which the shortage is declared;
- e. The availability and practicality of alternative sources for each category of water user;
- f. To the degree practical, how the District can implement phased restrictions and other required actions in a manner that distributes the burden of the required actions equitably among water users, relative to their impact on the affected Source Class(es) and specific water bodies experiencing the Water Shortage;

- g. The potential for serious harm to natural systems as a result of the drought or other Water Shortage;
- h. The appropriate geographic scope of potential water use restrictions and other required actions, relative to the affected source;
- i. The effectiveness of current and potential water use restrictions and other required actions in containing or reducing water use to protect the affected source; and
- j. Any adverse impact of current and potential water use restrictions and other required actions on public health, safety and welfare.

10. Based upon consideration of all relevant information, a Phase I Water Shortage exists within the portions of Charlotte, DeSoto, Hardee, Highlands, Hillsborough, Manatee, Pasco, Pinellas, and Sarasota Counties located within the District.

11. Based upon the foregoing, it is hereby **ORDERED**:

- a. The Phase I Water Shortage Lawn and Landscaping irrigation restrictions provided in Rule 40D-21.621(6), F.A.C., attached hereto as Exhibit A, shall go into effect for all water users subject to District restrictions in the portions of Charlotte, DeSoto, Hardee, Highlands, Hillsborough, Manatee, Pasco, Pinellas, and Sarasota Counties located within the District on May 12, 2020. These restrictions shall apply to all Lawn and Landscaping Uses, regardless of whether the use is associated with a Water Use Permit.
- b. The Phase I Water Shortage water use restrictions and other required actions provided in Rule 40D-21.621(3)(b), F.A.C., attached hereto as part of Exhibit A, shall go into effect for applicable Water Utility Uses subject to District restrictions in the portions of Charlotte, DeSoto, Hardee, Highlands, Hillsborough, Manatee, Pasco, Pinellas, and Sarasota Counties located within the District on May 12, 2020. This specifically includes monthly enforcement reporting. As part of the customer messaging that is also required, Water Utilities shall specifically inform customers that more aggressive water shortage action may become necessary if conditions worsen.
- c. As provided in Rule 40D-21.601(4), F.A.C., attached hereto as Exhibit B, “wasteful and unnecessary” water use is prohibited for water users subject to District restrictions in the portions of Charlotte, DeSoto, Hardee, Highlands, Hillsborough, Manatee, Pasco, Pinellas, and Sarasota Counties located within the District as of May 12, 2020.
- d. The above-described restrictions and other required actions shall remain in effect through July 1, 2020, unless extended, modified, or rescinded by the Governing Board prior to that date.

- e. Except as modified herein, all other provisions of the District's Year-Round Water Conservation Measures provided in Chapter 40D-22, F.A.C., shall remain in full force and effect.
- f. Pursuant to Section 373.609, F.S., and Rule 40D-21.421, F.A.C., county and city officials and all law enforcement authorities shall assist the Governing Board in the enforcement of the provisions of this Order.

DONE AND ORDERED in Sarasota County, Florida, on this 28th day of April, 2020.

SOUTHWEST FLORIDA WATER
MANAGEMENT DISTRICT

By: _____
Mark Taylor, Chair

(Seal)

Approved as to Legal Form & Content

Attorney

Filed this _____ day of
_____, 2020.

Deputy Agency Clerk

NOTICE OF RIGHTS

Persons whose substantial interests are affected may request an administrative hearing in accordance with Sections 120.569 and 120.57, Fla. Stat. and Chapter 28-106, F.A.C. A request for hearing that disputes the material facts on which the District's action is based must contain all elements required by Rule 28-106.201(2), F.A.C., including but not limited to: (1) an explanation of how the substantial interests of each person requesting the hearing will be affected by the District's action; (2) a statement of all disputed issues of material fact; (3) the Consent Order number; (4) the name, address and telephone number of the person requesting the hearing and, if applicable, of the person's representative; (5) a statement of when and how the person requesting the hearing received notice of the District's action; (6) a concise statement of the ultimate facts alleged, including the specific facts warranting reversal or modification of the District's action; and (8) the relief sought, including precisely what action the requester wishes the agency to take. A request for hearing that does not dispute the material facts on which the District's action is based shall state that no material facts are in dispute, contain the same information set forth above (with the exception of item (2)), and otherwise comply with Rule 28-106.301(2), F.A.C.

A request for hearing must be filed with (received by) the Agency Clerk of the District at the District's Tampa Service Office, 7601 U.S. Highway 301 North, Tampa, FL 33637-6759, within twenty-one (21) days of receipt of this notice. Documents should be addressed and sent or delivered to the District Agency Clerk at the Tampa Service Office, and may be filed by hand delivery, U.S. Mail, or other delivery service, or sent by facsimile transmission (fax) to the Agency Clerk at (813) 367-9776 or (813) 367-9778. If this Consent Order is mailed, receipt is deemed to be the fifth day after the date on which the Consent Order is deposited in the United States mail. Because the administrative hearing process is designed to formulate final agency action, the timely filing of a request for hearing may result in the District's final action being different from its original action. Any person who is not a party to this Consent Order whose substantial interests will be affected by any such final action of the District has the right to request a hearing in accordance with the requirements set forth above. Failure to file a request for hearing within the specified time period shall constitute a waiver of any right any such person may have to request a hearing under Sections 120.569 and 120.57, Fla. Stat. Mediation pursuant to Section 120.573, Fla. Stat., 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.

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.