

BEFORE THE SOUTHWEST FLORIDA
WATER MANAGEMENT DISTRICT

IN RE: SUSPENDING SECTION
112.061, F.S., TO ALLOW MODIFIED
CLASS C SUBSISTENCE REIMBURSEMENT
FOR STATE OF EMERGENCY

EMERGENCY ORDER NO. SWF 17-037

Pursuant to the authority of the State of Florida Executive Order Nos. 17-120 and 17-174, and Sections 120.569(2)(n), 252.32(1)(b), 252.36, 252.46, and 373.119(2), Florida Statutes, ("F.S."), Brian Armstrong, P.G., Executive Director of the Southwest Florida Water Management District ("District"), enters this Emergency Order in response to the immediate and continuing danger to the public health, safety, and welfare resulting from the wildfires burning throughout the State of Florida and those that may start up at once in many different locations. The Executive Director finds and determines:

FINDINGS OF FACT

1. On April 11, 2017, the Governor of Florida issued Executive Order No. 17-120 ("EO 17-120") declaring that the ongoing danger of wildfires threatens the State of Florida with a major disaster and that as a consequence of this danger a state of emergency exists in the State of Florida.

2. On June 9, 2017, the Governor of Florida issued Executive Order No. 17-174 extending the state of emergency declared in EO 17-120 for an additional 60 days.

3. Since the state of emergency was declared in EO 17-120, District staff were involved in responding to wildfires that burned on thousands of acres of public land within the geographic boundaries of the District. Because the wildfires occurred throughout the District, this Order shall apply to the entire District.

4. EO 17-120 provides that an agency may suspend the provisions of any regulatory statute prescribing the procedures for the conduct of state business if strict compliance with the provisions of any such statute would in any way prevent, hinder, or delay necessary action in coping with the emergency. This includes the authority to suspend any and all statutes which affect travel and the compensation of employees.

5. Section 373.119(2), Florida Statutes ("F.S."), provides that whenever the Executive Director, with the concurrence and advice of the governing board, finds that an emergency exists requiring immediate action to

protect the public health, safety or welfare the Executive Director may, without prior notice, issue an order reciting the existence of such an emergency and requiring that such action be taken as the executive director deems necessary to meet the emergency.

6. Section 252.46, F.S., provides that agencies are authorized and empowered to make any orders necessary for emergency management purposes. Further, EO 17-120 states that any suspension of statutes by agencies coping with the state of emergency shall be by emergency rule or order in accordance with Section 252.46, F.S.

7. Section 112.061, F.S., provides the procedures for the computation of travel time for reimbursement of travel expenses for District employees. Section 112.061 defines Class C travel as travel where the traveler is not away from his or her official headquarters overnight. For Class C travel the traveler receives subsistence reimbursement for the meals that occurred while the traveler was traveling, based on the following schedule: breakfast, when travel begins before 6 a.m. and extends beyond 8 a.m.; lunch, when travel begins before 12 noon and extends beyond 2 p.m.; and, dinner, when travel begins before 6 p.m. and extends beyond 8 p.m.

8. The District staff involved in responding to the wildfires that occurred on public lands would often start work in the evening and continue until the early morning hours. The reimbursement schedule authorized by Section 112.061, F.S., would not allow the District to reimburse these employees for anything other than dinner even if the employees worked an 8-hour shift because the hours worked would end before 8 a.m.

9. Strict compliance with Section 112.061, F.S., would hinder the District from taking necessary action in coping with the emergency because it would not be able to appropriately reimburse employees engaged in fighting the wildfires throughout the District. Accordingly, the Executive Director has determined that it is necessary to take emergency action to suspend this statutory provision in order to provide the appropriate modified Class C subsistence reimbursement for the District employees responding to the wildfires.

10. The Executive Director has determined that the exercise of emergency powers under Section 373.119, F.S., is necessary in this instance to protect the public health, safety, or welfare by allowing the District to take necessary action to cope with the state of emergency caused by the wildfires throughout the District.

CONCLUSIONS OF LAW

11. A state of emergency declared by the Governor of Florida exists, requiring immediate action by the Executive Director of the District, as duly authorized by Sections 120.569(2)(n), 252.32(1)(b), 252.36, 252.46, and

373.119(2), F.S., to issue an emergency order suspending the provisions of Section 112.06, F.S., to allow modified Class C subsistence reimbursement for District employees engaged in responding to wildfires.

WHEREFORE, it is hereby **ORDERED** that:

12. The provisions of Section 112.06, F.S., are hereby suspended to allow the District to provide a modified Class C subsistence reimbursement for District employees engaged in responding to wildfires.

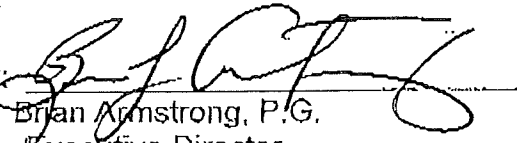
13. This Order shall take effect immediately upon execution by the Executive Director, and shall apply retroactively to April 11, 2017, and expire on August 8, 2017, unless rescinded or extended by Governing Board or Executive Director action on or before that date.

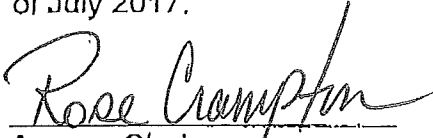
DONE AND ORDERED this 19th day of July 2017.

SOUTHWEST FLORIDA WATER
MANAGEMENT DISTRICT

Filed this 19th day
of July 2017.

By: _____


Brian Armstrong, P.G.
Executive Director

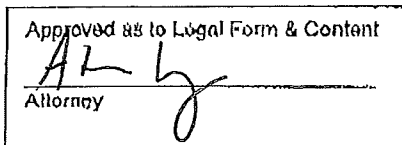

Rose Crampton
Agency Clerk

The Governing Board of the Southwest Florida Water Management District concurred with the action taken by the District's Executive Director.

Acknowledged this ____ day of July 2017.

By: _____

Randall S. Maggard
Chair



Attest: _____

Bryan K. Beswick
Secretary

NOTICE OF RIGHTS

In accordance with Sections 373.119(3), 120.569, and 120.57, Florida Statutes ("F.S."), and Chapter 28-106, Florida Administrative Code ("F.A.C."), persons to whom this Order is directed, or whose substantial interests are affected, may request an administrative hearing. 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 District Order number; (4) the name, address, any e-mail 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; (7) a statement of the specific rules or statutes the petitioner contends require 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, and must contain the 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 Highway 301 North, Tampa, Florida 33637-6759 or by facsimile transfer to (813) 367-9776 or (813) 367-9772 within twenty-one (21) days of receipt of this notice. 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. 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, 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.

PURSUANT TO SUBSECTION 373.119(3), F.S., AND NOTWITHSTANDING ANY OTHER PROVISION UNDER CHAPTER 120, F.S., PERSONS TO WHOM THE ORDER IS DIRECTED SHALL COMPLY THEREWITH IMMEDIATELY, AND THE TIMELY FILING OF A PETITION SHALL NOT STAY SUCH

PERSON'S OBLIGATION TO MAINTAIN SUCH COMPLIANCE DURING THE
PENDENCY OF ANY ADMINISTRATIVE PROCEEDING.